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PUBLIC HEARING REGARDING

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PROPOSED CHANGES TO THE

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SURFACE WATER QUALITY STANDARDS

11

FEBRUARY 3, 2003

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BELLINGHAM, WASHINGTON

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Reported by:

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Sandra B. Sullivan, RPR, CCR

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CCR No. SULLISB444PD

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APPEARANCES:

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FOR THE DEPARTMENT OF ECOLOGY:

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Ms. Bev Poston

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Mr. Andrew Kolosseus

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Mr. Mark Hicks

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Department of Ecology

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Water Quality Program

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P.O. Box 47600

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Olympia, Washington 98504-7600

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1 BE IT REMEMBERED that a Public Hearing was held
2 on FEBRUARY 3, 2003, at the hour of 8:08 P.M., at
3 BELLINGHAM, WASHINGTON, before Sandra B. Sullivan, RPR, CCR,
4 Notary Public in and for the State of Washington, residing
5 at Bellingham, Washington;

6 Whereupon, the following proceedings were had,
7 to-wit:

8 * * * * *

9 MS. POSTON: If you bear with me, there's a
10 few things I need to read into the public record before we
11 actually start the public testimony.

12 Okay. Let the record show that it is 8:08 p.m.
13 on February 3rd, 2003 and this hearing is being held in the
14 council chambers of the Whatcom County Courthouse located at
15 311 Grand Avenue, Bellingham, Washington. The primary
16 purpose of this hearing is to receive public comments
17 regarding proposed changes to Chapter 173-201A, Water
18 Quality Standards for Surface Waters of the State of
19 Washington, as well as the draft environmental impact
20 statement for this proposal.

21 The legal notice of this hearing was published
22 in the Washington State Register on January 3rd, 2003, Issue
23 Number 03-01-124. In addition, display ads announcing the
24 hearings were published in the following papers: January
25 15th, 2003, The Olympian; January 23rd, 2003, The Wenatchee

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1 World, Spokesman Review, Tri-City Herald and Yakima Herald;
2 on January 30th of 2003, The Bellingham Herald, Seattle
3 Times Post-Intelligencer, Peninsula Daily News, Aberdeen
4 World, The Columbian Vancouver, and The Longview Daily News.

5 The Department of Ecology also directly mailed
6 out approximately 3,320 announcements, 550 e-mail
7 announcements, and 621 CDs to potential interested citizens,
8 regulated businesses, and governmental officials in every
9 city, county and tribe in the state of Washington.

10 The Department of Ecology is expecting to adopt
11 the proposed changes as well as the draft environmental
12 impact statement no later than July 1st, 2003. Federal
13 regulations require that state water quality standards be
14 approved -- excuse me, be reviewed and approved by the
15 United States Environmental Protection Agency for compliance
16 with the Clean Water Act prior to their use.

17 The Environmental Protection Agency has 60 days
18 to approve or 90 days to disapprove the state-adopted
19 standards. If the state water quality standards are
20 disapproved by the Environmental Protection Agency because
21 of noncompliance with either the Clean Water Act or the
22 Engangered Species Act, the Environmental Protection Agency
23 must promulgate new standards on behalf of the state or seek
24 alternative measures. The new water quality standards will
25 not take effect for approval of activities covered under the

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1 Federal Clean Water Act until this process has been
2 completed.

3 Okay. At this time, we'll begin with oral

4 testimony. And, when I state your name, if you would please
5 come up to the wooden box up here where the microphone is
6 and state your name and address for the record and please
7 begin your testimony.

8 The first person I have on my list, I believe
9 this is Mr. Rich Bowers, and Mr. Bowers will be followed by
10 Mr. Don Bottles. So if you'd please come up.

11 Mr. Bowers, are you here? Hi.

12 MR. BOWERS: Hi. You called me first.

13 Hi. My name is Rich Bowers. I live at 830
14 Reveille Road, Bellingham, 98229. And, earlier on, Mark was
15 I think very good at answering a lot of my questions, so
16 I'll abbreviate my questions to just two and I'll file the
17 rest written.

18 My two comments are, I'd like to see recreation
19 restored as a protected use. I think that's necessary to
20 better protect the use of rivers and streams, and also to
21 provide another tool to increase instream flows through
22 ecological habitat and recreational use, especially in
23 headwater areas. We'd like to see that get back in there.
24 I think we could be a big help in future river issues.

25 The second is, I'd like to see the

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1 antidegradation policy, some of the loopholes that I see in
2 there, be closed up. Mark mentioned that that policy was
3 meant to tighten the antidegradation policy, to make it
4 easier; but, when you tighten, you have two problems. One,
5 it can be interpreted in different ways. I'd like to make
6 sure the interpretations are thought through, and that the
7 language is amended so we can eliminate any possible
8 loopholes that may come about in the future, and also help
9 in enforcement. Once you tighten something, you make it
10 that much more specific. It's also much more difficult to
11 enforce, so I'd like to make sure that these thoughts are
12 initiated and can be enforced. And those are my comments.

13 Thank you.

14 MS. POSTON: Thank you.

15 Okay. Mr. Don Bottles. And Mr. Bottles will
16 be followed by Wendy Stevenson -- Steffensen.

17 MR. BOTTLES: I'm Don Bottles, B-O-T-T-L-E-S,
18 326 South 10th Street, Mount Vernon, Washington, 98274. And
19 I'm also representing the Paddle Trails Canoe Club. The
20 Paddle Trails Canoe Club has a membership of over 200,
21 including families and single memberships. We spend a lot
22 of time on rivers. We're primarily a river club, and we
23 probably have 150, 175 trips on rivers each year. So we are
24 concerned about the rivers and how this will affect the
25 rivers.

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1 And what we would like to request is that
2 specific language be included that would recognize
3 recreation and boating as recreation. We would like to have
4 you address the quantity along with the quality, not only
5 for salmon, et cetera, but for recreational use also.

6 Another thing that concerns me a little bit is
7 the wading vs. the swimming. I think the quality of wading
8 water is probably as important or more important than

9 swimming water, because the small meandering streams are
10 where you take your children to let them splash and play,
11 and there's always a deep hole that can go dive and swim
12 in. So I think that's very important also.

13 So I guess what we would like to see is that --
14 that we do control pollution, that we do protect ourselves
15 against those loopholes that might permit pressure to be
16 brought by persons or a business or agency to relax our
17 standards. And I think it's very important in our state of
18 Washington that we keep our rivers clean and free-flowing,
19 and it's something that everybody across the United States
20 will -- will enjoy when they come to Washington.

21 MS. POSTON: Okay. Thank you.

22 Okay. Is it Steffensen?

23 MS. STEFFENSEN: Steffensen.

24 MS. POSTON: Steffensen. Who will be followed
25 by Robert Smit.

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1 MS. STEFFENSEN: Thank you. Wendy Steffensen,
2 S-T-E-F-F-E-N-S-E-N, 1155 North State Street, Suite 623,
3 Bellingham. I'm here as a citizen as well as a spokesperson
4 for RE-Sources, an environmental organization in
5 Bellingham. Our main concern is protecting marine waters as
6 well as protecting the environment for the community around
7 us.

8 You mentioned that you gave a lot of public
9 notice, a lot of e-mails went out. I mean, the sheer number
10 was -- was very amazing. However, still a lot of people did
11 not know about this meeting tonight. I would -- I would
12 hope that you would publicize this in the newspaper
13 additional times than just once.

14 I am going to read my comments. I want to
15 first address changing from a class-based to a use-based
16 system. Changing from a class-based system to a use-based
17 system is less protective of water quality and should not be
18 adopted. In a class-based system, many uses were supported
19 by the designated class and the attainment of good water
20 quality was supported by the fact that the class designation
21 has limits for all of the regulated parameters.

22 In the proposed use-based system, many uses are
23 not included and the different parameters comprising water
24 quality will be variously regulated depending on the
25 designated use. The use-based system removes general

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1 protections from the water body if the water body is not
2 specifically designated for that use.

3 The proposed use system is very utilitarian.
4 It does not protect water quality as an end but as a means.
5 This is a wrong-headed approach and will drive our water
6 quality down to the lowest common denominator as allowed by
7 the regulations.

8 And, as an aside here, I sometimes read permits
9 promulgated by the Department of Ecology and it seems to me
10 there's always been this -- this theory that there should be
11 no back-sliding when we renew permits and give permits.
12 This whole rewrite seems to be a back-sliding in protecting
13 water quality.

14 I also wanted to address the antidegradation
15 policy. Although the antidegradation policy has always been
16 difficult to implement because it is so vague, the proposed
17 changes are not an improvement. The antidegradation policy
18 is too narrowly defined and it provides numerous exceptions
19 to allow for lesser water quality. In the proposed policy,
20 DOE will limit the degradation analysis to four of the eight
21 types of permitting activities, to new or expanded actions,
22 and to situations where changes in water quality are
23 detected outside of the mixing zone. This obviously leaves
24 out many permits and the renewal of permits.

25 In addition, detection of changes outside of
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1 the mixing zone may not be the only way or the most accurate
2 way to assess degradation. For instance, degradation might
3 be better assessed using sediment data or by checking
4 whether the mixing zone model for a contaminant is accurate
5 within the mixing zone where contaminant concentrations are
6 higher and, therefore, more easily detected.

7 Any rewrite of the antidegradation policy --
8 policy should include the ability of a citizen or a group
9 giving an adequate argument to request and obtain an
10 antidegradation review. Without this ability, the
11 antidegradation policy does not serve the public.

12 Under the policy, exemptions exist to allow the
13 degradation of water that is of a higher quality than
14 designated by its use qualification. This type of analysis
15 will allow degradation if there is a justified economic or
16 social benefit. Exemptions for water quality may also be
17 obtained by the already existing short-term modification,
18 which is up to five years and renewable; or the newly
19 proposed variance, also up to five years and renewable;
20 removal of a use by the use attainability analysis; the
21 provision of off-site -- of site-specific criteria; or water
22 quality process.

23 I have just listed six ways a water body can be
24 degraded under -- under these new rules. Neither the
25 limitations put on the proposed antidegradation law nor the

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1 newest exemptions allowing degradation serve the intent to
2 prevent water quality degradation.

3 I want to mention three specific things. The
4 new temperature criteria for char-bearing waters is more
5 protective and it should be instituted regardless of whether
6 a class- or a use-based system is promulgated. The deletion
7 of a lake class does away with protection specific to lakes
8 which states that dissolved oxygen, temperature and pH
9 should not change from natural conditions. The deletion of
10 this provision has implications for Lake Whatcom that I
11 would like to be considered, as well as the fair quality
12 designation for marine waters should really not be used at
13 all. The temperature and dissolved oxygen limits are so
14 poor as to not be appropriate for any water body. The
15 designation of, quote, unquote, "fair quality" indicates
16 that the Department of Ecology no longer considers the water
17 body to be viable as a habitat, and that is not acceptable.

18 Thank you.

19 MS. POSTON: Thank you.
20 Okay. Mr. Robert Smit. And Mr. Smit will be
21 followed by Jason VanderVeen.
22 Go ahead.
23 MR. SMIT: Thank you. My name is Robert Smit.
24 I live at 9039 Guide Meridian, Lynden. I just -- it's more
25 of a comment and it's more of a personal comment is that I
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1 think that we need to look at saving fish and water quality,
2 and those are really good things; but I think there's also
3 something that needs to be addressed, and there's a whole
4 segment of our society that is dying and that is
5 agriculture. And that's -- if you go out in the county and
6 you see the number of farms that are going down, and yet
7 most of our forefathers were farmers and I think that we
8 have to use some common sense.
9 And losing that water quality is a thing that
10 all people in the state of Washington hold dear, and that I
11 just think it's -- you know, people, we hit on both sides of
12 the fence and I think really we're all on the same page.
13 And I want clean water for my -- for my kids, their kids and
14 their kids. And but I think they've got to go hand in hand
15 where we as a society have to also protect our heritage,
16 which is agriculture.
17 Thank you very much.
18 MS. POSTON: Thank you.
19 Okay. And Mr. VanderVeen will be followed by
20 Randy Good.
21 MR. VANDERVEEN: Hi, I'm Jason VanderVeen, 1458
22 East Pole Road, Everson. I have some concerns over the
23 standards that are being looked at for ag streams. Most of
24 our streams are low-gradient streams. Flow is slow, so you
25 have a hard time with dissolved oxygen. Temperature
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1 increases because the flow is so slow, and I just -- I have
2 very high concerns over that as I noticed that a lot of the
3 ag streams are also salmon rearing and will be put into the
4 Class AA. And, at 16 degrees Celsius, they're going to be
5 pretty hard to achieve.
6 Just a couple questions I have. Why do we need
7 fish -- fish-centric water quality standards when we've had
8 record runs for many species of salmon? And, also, will
9 these standards lead to more farmers and ranchers getting
10 put out of business and the further decline of economics in
11 the rural sector of Washington?
12 MS. POSTON: Thank you.
13 MR. GOOD: My name is Randy Good at 25512
14 Minkler Road, Sedro-Woolley. I'm a dairy farmer, and I
15 second the last two speakers.
16 The Washington state Senate Land Use and
17 Planning Committee just last week took an enormous amount of
18 comments from county officials and others addressing the
19 inadequacies of government agency science. And I guess I
20 was wondering, do the references in this proposal meet the
21 requirements of best available science listed under the WAC
22 365-195-900 through 925? This must be addressed 'cause I do
23 not feel very many of them do meet those requirements.

24 Also, there is no definition of science listed
25 in these documents. Under the temperature criteria, the
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1 Department of Ecology was on the advisory group that
2 supervised the Sherman Creek implementation project study in
3 Ferry County, Washington. Now, the study concluded that
4 high stream temperatures are closely related to surrounding
5 air temperatures, concluding shade does not cool water.
6 Science entered into this record for the environmental
7 impact supports the Sherman Creek report, and our Skagit
8 County actually is -- replicates that.

9 This contradicts the requirements proposed in
10 this document. The documents themselves make statements
11 addressing inadequate science data leaving us all wondering,
12 how do you make regulations on that? The Department of
13 Ecology must not use assumptions and opinions from models
14 without sound science which could cause adverse effects to
15 our environment.

16 Dissolved oxygen. Manser Creek in Skagit
17 County is one of the largest fish-producing creeks in the
18 state of Washington, but the creek fails DOE dissolved
19 oxygen standards miserably. So, again, apparently I guess
20 we failed to tell -- or DOE failed to tell the fish what was
21 best for them in Manser Creek.

22 Many comments and references were previously
23 entered into the EIS scoping process that met the criteria
24 for best available science criteria listed under the WAC
25 365-195-900 through 925. These references were not

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1 considered in these documents.

2 The criteria for agricultural water supply,
3 the Ecology working group opposed setting these supply
4 criteria for agriculture. We agree. With concerns now
5 being expressed through the Senate and items addressed to
6 both any water quality requirements and revising the RCWs
7 must be sound science that meets the WAC 365-195-900 through
8 925.

9 Thank you for your time.

10 MS. POSTON: Thank you very much.

11 Okay. I'm not sure if this is an "N" or a "Y."
12 It could also be an "X." Mr. Richard Gilda, would you like
13 to testify, sir?

14 MR. GILDA: Did you make fun of me?

15 MS. POSTON: That says -- I don't know if you
16 wanted to testify or not. No.

17 MR. GILDA: Yeah.

18 MS. POSTON: Okay. Please come up, sir.

19 MR. GILDA: Okay. I hadn't planned on it
20 originally, but I feel I've got to vent on the record.

21 MS. POSTON: Please do. Please do.

22 MR. GILDA: We've already done it for years.

23 MS. POSTON: That's -- and that's what I'm here
24 for.

25 MR. GILDA: I'm Richard Gilda, Jensen Road in

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1 the beautiful Lake Whatcom watershed. For 37 years I've
2 watched it deteriorate, mainly because of over-regulation,

3 not lack of regulation. DOE has probably got some of the
4 most dedicated environmental employees in the state. I
5 admire them for what they're trying to do. I wish I had
6 their dedication; but, you know, it's become hard to respect
7 DOE. Often they give the impression that they're listening,
8 but they're not hearing. Not just Bellingham DOE people,
9 I'm talking about Olympia, too.

10 Water rights for small farms. About ten years
11 ago, I was told register my pond because I use it to feed
12 cattle and irrigate a little small orchard and some of the
13 grass when it gets dry. I did that. I got a letter back,
14 "We're overlogged." I called down several times. "There's
15 about 600 ahead of you. We'll get to you sooner or later."

16 Two years ago was the last time I called. They
17 still can't find my -- I'm lost. They have no record of
18 it. I said, "Well, I've got a record," and they said,
19 "Sorry, that doesn't mean anything. We don't have a record
20 of you having sent in the paperwork." I've heard this story
21 from other people, too.

22 Now you're making changes. My question is, are
23 they common-sense changes or are they changes to be
24 changes? If one part of Lake Whatcom as an example is bad,
25 would you condemn the whole lake? The north end, Silver

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1 Beach, has its problems, but you put the whole lake on the
2 -- on your list. You do the same thing with other streams
3 I've heard in other counties. We have problems here and
4 they mentioned many streams. If your finger's been smashed,
5 you take care of that. You don't cut your arm off or
6 condemn the whole body.

7 I guess that one of my concerns is, are you
8 going to try and come up with -- again with a one size fits
9 all? You know it doesn't work. Our county government's
10 fighting the same thing. I just finished some time on the
11 planning commission, eight years of it. I went through the
12 critical areas war. One size does not fit all. They keep
13 trying to do that. Our government employees think that's
14 the best way.

15 We've lost more wetlands in Whatcom and Skagit
16 County now due to over-regulations or fear of regulations.
17 I've watched people take a wetland that they have a frog
18 pond in or a duck pond. They get a little trencher and go
19 out there and trench out a ditch to their road, and bucket
20 by bucket fill it in so the gravel will drain 'cause they're
21 afraid of what's going to happen because of the
22 regulations. We're not doing anything by saving -- saving
23 land by regulating and over-regulating.

24 I guess I'm kind of -- my last comment or
25 question is, what is the purpose of this? I've lived in

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1 Whatcom County all my life. I grew up in the woods. I
2 worked the land. My job is land and vegetation management,
3 and I'm proud of what I do. But we keep running into
4 problems with over -- I see people over-regulating or
5 getting over-regulated. And then they go out the first
6 chance they get and they'll go around with a dozer or a
7 backhoe or a trencher like I mentioned and they'll drain

8 their wetlands or take their stream and change it.
9 I mentioned before to you, I missed the
10 workshop. And I'm kind of curious if you can answer now or
11 somebody can answer somewhere along the way, what is the
12 driving force behind this change in regulations?
13 MS. POSTON: Well, I'll have someone after the
14 hearing come and talk to you.
15 MR. GILDA: That would be appreciated.
16 MS. POSTON: Okay.
17 MR. GILDA: Thank you.
18 MS. POSTON: Okay. Thank you.
19 Okay. At this time, no one else has indicated
20 they would like to testify. And then Nelda Sigurdson put a
21 question mark down, maybe, maybe not. Is Ms. Sigurdson
22 here? No? (No response.)
23 Okay. Is there anyone else here who would like
24 to provide testimony on the proposed changes? Come down one
25 at a time and please state your name and your address.
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1 MR. EMERSON: My name is Richard Emerson. I'm
2 with the Building Industry Association of Whatcom County,
3 3323 Northwest Avenue in Bellingham.
4 And I don't have the benefit of having any
5 opinions to impart tonight, because I don't know what you're
6 talking about. I got information second-hand from a friend
7 who heard on the radio today that there was a public hearing
8 on new water standards tonight at 8 o'clock. I came just
9 before 8, only to find out that I had missed the workshop to
10 explain the new water standards. I did not get an e-mail.
11 I did not get a special mailing. The past chairman of our
12 planning commission, who's in the audience tonight, was not
13 notified. The present member of the planning -- chairman of
14 the planning commission was not notified.
15 And I -- I have to agree with Mr. Gilda who
16 spoke just before me that if you're going to change things
17 so frequently, especially with those that have such impact
18 and such strong feelings on the part of so many people in
19 the state of Washington, you have to do things right. I
20 don't know how you got a list of individuals to mail to or a
21 list of persons to send e-mails to, but one notice in the
22 paper doesn't do it. And if there are dramatic changes or
23 changes at all coming down, this workshop and this public
24 hearing doesn't do justice to them.
25 And I would suggest that DOE and the staff
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1 responsible do a professional job in making sure that if
2 there are changes coming down that they are better
3 distributed and that the public has a better chance to
4 understand what this is all about. And, more than that, I
5 can't add.
6 Thank you.
7 MS. POSTON: Okay. Thank you, sir. It's my
8 understanding that there was some confusion with the public
9 noticing, and I apologize on behalf of the Department for
10 that. I'm not sure what happened, but you can bet your best
11 dollar when I get back to Olympia I will find out --
12 MR. EMERSON: Well, that's good.

13 MS. POSTON: -- what happened. I have no idea.

14 MR. EMERSON: I appreciate that, except that a
15 shortcoming on the part of DOE does nothing now to change
16 the input you would have gathered from this public hearing,
17 and that's unfortunate.

18 MS. POSTON: I totally agree, and we will --
19 because of this, we're going to be hanging around for a
20 while. We're going to have staff available to discuss with
21 you issues that were brought forth tonight during the
22 workshop portion to maybe bring you up to speed with what's
23 happening. There's a document table in the back that has a
24 lot of information.

25 Again, I apologize, because it doesn't do you a
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1 whole heck of a lot of good during the hearing format, but
2 on the flip side, our public comment period is open until
3 March 7th. So it will still provide you with an opportunity
4 to provide comment in a written format.

5 MR. EMERSON: May I ask how many people
6 attended the workshop?

7 MS. POSTON: We had several people here who
8 were -- we had a pretty good size crowd for the workshop,
9 so I don't know what the breakdown was. But I'm going to
10 try to find out so that that doesn't happen again. That is
11 not our purpose. We are here to get public comment, and for
12 the public not to know we're here is doing a disservice to
13 all of us. So I apologize.

14 Hi.

15 MR. PROS: Hi.

16 MS. POSTON: State your name and --

17 MR. PROS: I'm Dave Pros, 1466 Roy Road,
18 Bellingham. And I wanted to also echo what Richard just
19 said. I am the current chairman of the planning commission,
20 Whatcom County Planning Commission. I didn't hear about it.
21 I had to make five phone calls and three e-mails to even
22 find out; and, after all of that, I couldn't be told where
23 the meeting was. So whatever apparatus you have for getting
24 information out to us, it's not working very well.

25 The second point that I wanted to make is, in
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1 the context of trying to plan for the county, I appreciate
2 that you all are changing your philosophies; but when it
3 comes down to getting our input, if we knew what your change
4 in philosophy actually meant to us, it would have a lot more
5 meaning. We might have a lot more questions.

6 If you could take an example and say, "Okay.
7 This is where we were before on this lake or this piece of
8 water and here's where it's going to be now," we would be
9 able to understand what you're talking about. But, you
10 know, just to come in and hear that there's a philosophy
11 change, well, that could be good or bad. You're not saying
12 how you're going to implement that philosophy change, what
13 the penalties are if the change -- if the criteria is not
14 met, and so really it's just a -- an exercise in philo --
15 philosophy.

16 So I would like to see it be more down to
17 earth, more concrete, dealing more with the problems that we

18 might have or at least giving us concrete examples. And I
19 certainly would like to see more -- better effort made to
20 get the word out when a meeting like this is going to
21 occur.

22 Thank you.

23 MS. POSTON: Thank you.

24 Okay. Is there anyone else?

25 MR. RIESLAND: Bob Riesland, 3314 Douglas

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1 Road. I've probably been involved in water issues a lot
2 longer than I want to think about. And I was caught
3 completely off guard as to this meeting and the -- the work
4 session previously, so I really want to protest the lack of
5 public information on this issue.

6 I'll only touch on one subject and that is
7 temperature standards. I keep being concerned when we --
8 you know, one of the issues says instream flow and water
9 temperature. These two bother me considerably, because it
10 appears to me that we're trying to set a standard based on
11 theory rather than actual. And have these temperatures that
12 are being arrived at a history of being achieved at some
13 point in time? That's my main concern. And I think you're
14 going to find that that's not true in a lot of instances.

15 So when you make a blanket rule, this stream,
16 this stream, this stream, this stream all have to meet that
17 standard and maybe some of them never did meet that
18 standard, then you're creating an impossible standard to
19 meet.

20 Thank you.

21 MS. POSTON: Thank you, sir.

22 Is there anyone else? Is there anyone else
23 here who would like to provide testimony tonight? (No
24 response.)

25 Okay. All testimony presented at this hearing

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1 and the other seven hearings as well as any written comments
2 received are part of the official record for this proposal
3 and will have equal weight in the decision-making process.
4 The public comment period ends on March 7th, 2003 at 5
5 o'clock p.m. Please submit written comments to Susan
6 Braley, B-R-A-L-E-Y, Department of Ecology, Post Office Box
7 47600, Olympia, Washington, 98504-7600. Written comments
8 mailed must be postmarked by March 7th, 2003.

9 You may submit comments by e-mail to Susan at,
10 and this is not case sensitive, swqs@ecy.wa.gov. Comments
11 may also be received via fax. The fax number is
12 360-407-6426. All oral and written comments received during
13 the public comment period will be responded to in a document
14 called "The Response to Comment Summary" that will state
15 Ecology's official position on the issues and concerns --
16 concerns raised during the public comment period. That
17 document should be available around June 23rd, 2003. It
18 will automatically be mailed out to everyone who provided
19 oral or written testimony and who provided us with return
20 address information. As stated earlier, the Department of
21 Ecology is anticipating the adoption of this regulation to
22 occur no later than July 1st, 2003.

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WASHINGTON STATE DEPARTMENT OF ECOLOGY
WATER QUALITY PROGRAM

ECOLOGY PUBLIC HEARING
PROPOSED CHANGES TO THE WATER QUALITY STANDARDS
AT COLUMBIA BASIN COMMUNITY COLLEGE, GJERDE FACILITY
AT PASCO, WASHINGTON
JANUARY 29, 2003
8:10 p.m.

REPORTED BY:
BETH L. DRUMMOND, CCR

NOTARY PUBLIC
A P P E A R A N C E S
HEARING OFFICER: BEV POSTON
SPEAKERS: (In order of appearance):
PERRY HOUSTON

P R O C E E D I N G S

MS. POSTON: Let the record show it is 8:10
p.m. on January 29th, 2003, and this hearing is being

5 held at the Columbia Basin College, Building H, Gjerde
6 Facility located at 2600 N. 20th Avenue, in Pasco
7 Washington.

8 The primary purpose of this hearing is to
9 receive public comments regarding proposed changes to
10 Chapter 173-201A, Water Quality Standards for Surface
11 Waters of the State of Washington.

12 The legal notice of this hearing was
13 published in the Washington State Register on January
14 3rd, 2003, Issue No. 03-01-0124. In addition, display
15 ads announcing the hearings were published in the
16 following papers:

17 On January 15th, 2003, the Olympian; on
18 January 23rd, 2003, The Wenatchee World, Spokesman
19 Review, Tri-City Herald, Yakima Herald; and on January
20 30th of 2003, display ads will be published in the
21 Bellingham Herald, Seattle Times/Post Intelligencer,
22 Peninsula Daily News, Aberdeen World, The Columbian
23 (Vancouver), and the Longview Daily News.

24 Department of Ecology also directly mailed
25 out approximately 3,320 announcements, 550 e-mail

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1 announcements, and 621 CD's to potential interested
2 citizens, regulated businesses, governmental officials,
3 and every city, county, and tribe in the State of
4 Washington.

5 The Department of Ecology is expecting to
6 adopt the proposed changes as well as the draft
7 Environmental Impact Statement no later than July 1st of
8 2003. Federal regulations require that state water
9 quality standards be reviewed and approved by the United
10 States Environmental Protection Agency for compliance
11 with the Clean Water Act prior to their use. The
12 Environmental Protective Agency has 60 days to approve or
13 90 days to disapprove the state adopted standards. If
14 the state water quality standards are disapproved by the
15 Environmental Protection Agency because of noncompliance
16 with either the Clean Water Act or the Endangered Species
17 Act, the Environmental Protection Agency must promulgate
18 new standards on behalf of the state or seek alternative
19 measures. The new water quality standards will not take
20 effect for approval of activities covered under the
21 Federal Clean Water Act until this process is complete.

22 At this time, we have one person who has
23 indicated they would like to provide testimony. And,
24 Mr. Perry Houston, please come up, state your name for
25 the record, and please begin.

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1 MR. HOUSTON: Thank you, Hearing Officer and
2 the personnel of the Department of Ecology for this
3 opportunity tonight. I am Perry Houston. I am the
4 commissioner for District 3 on the Kittitas County Board
5 of County Commissioners.

6 This evening I give testimony in my position
7 as commissioner of District 3. The board has not adopted
8 a formal position at this time. We will do so and submit
9 that at a later date.

10 I have submitted written comments for the
11 record. I will not go over those comments in the effort
12 to save time. I'll make a few other observations that
13 have come to mind in the course of the presentation this
14 evening. I would like to thank the staff for the
15 thoroughness of the presentation, and arguably, for the
16 thoroughness of the document. But, on one hand, in the
17 complement, there's also a concern in having this much
18 information and so many standards that we argue are
19 possibly not attainable or applicable to only very
20 specific circumstances.

21 I realize the term "flexibility" has been
22 used, and I would submit flexibility in the law is
23 remarkably close to ambiguity in the law. And if we have
24 a law, a rule, a regulation, however you wish to
25 characterize it, that is so difficult to pinpoint in

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1 terms of compliance, I submit we're going to spend a lot
2 of time burning resources, creating credibility issues,
3 creating concerns in the very people that need to come
4 forward to assist the state in gaining this compliance,
5 that we're going to lose our ability to actually generate
6 the sorts of improvements we would all like to see.

7 Case in point, as we speak, the Department of
8 Ecology is working on other rules, changes to rules, to
9 try to get the Irrigation Improvement Program out in the
10 field. There's money in the bank that has not been spent
11 because people will not come forward to avail themselves
12 of those resources, put irrigation improvements in place
13 to conserve water. A lot of that ties back to
14 credibility, and it ties back to the concerns and
15 experiences had in that program and how it interacts with
16 all of the other discussions we're having at the time.

17 The discussions are compartmentalized.
18 Because they're compartmentalized, it is so difficult for
19 people to truly believe that they're safe in stepping
20 forward, that we're not getting these improvements in the
21 field. We worry about water temperature rather than
22 trying to put the very infrastructures in the field that
23 could conserve water and enhance in-stream flows. We
24 know that if we enhance in-stream flows, we will improve
25 water quality. I don't need to burn all my resources to

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1 determine that water temperature. I need to put those
2 resources in the field.

3 I think we're also dealing with an issue
4 where we have so many federal agencies dictating so many
5 different approaches and standards, that the state is
6 slowly but surely wandering down a path that is going to
7 make it incredibly difficult for them to assist myself,
8 as a local, to make the changes we have to make.

9 We need to fall back. We have a document
10 now, that I would suggest is an excellent scoping
11 document. You've identified a myriad of issues, all of
12 which need to be discussed. But rather than use that for
13 the basis of a rule, let's use that for the basis of a
14 discussion of the sorts of programs, the sorts of

15 regulations, the sorts of enforcement that we ought to
16 have in place to reach truly obtainable goals, and what I
17 think is everyone's desire, to obtain a higher standard
18 of water quality.

19 I'll restrict my remarks to that at this
20 time. Again, the board will present formal remarks at a
21 future hearing, and I appreciate the opportunity to
22 speak. Thank you.

23 MS. POSTON: Okay. Is there anyone else here
24 who would like to provide testimony?

25 (Pause in the proceedings.)

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1 MS. POSTON: No? Okay. The testimony that
2 was presented here at this hearing and the other seven
3 hearings being held around the state as well as any
4 written comments received, are part of the official
5 record for this proposal and will receive equal weight in
6 the decision-making process.

7 The public comment period ends March 7, 2003
8 at five o'clock p.m. Please submit written comments to
9 Susan Braley, the Department of Ecology, Post Office Box
10 47600, Olympia, Washington 98504-7600. Written comments
11 mailed must be postmarked by March 7, 2003. You may
12 submit comments by e-mail to Susan. Her e-mail address
13 -- and this is not case sensitive -- is swqs@ecy.wa.gov.
14 Comments may also be received via fax. The phone number
15 is 360-407-6426.

16 All oral and written comments received during
17 the public comment period will be responded to in a
18 document called a Response to Comment Summary that will
19 state Ecology's official position on the Issues and
20 concerns raised during the public comment period. That
21 document should be available around June 23rd, 2003. It
22 will automatically be mailed out to everyone who provided
23 oral or written testimony and who provided us with return
24 address information. It's my understanding it will also
25 be posted on the Web page.

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1 As stated earlier, Ecology is anticipating
2 the adoption of this regulation to occur no later than
3 July 1st, 2003. On behalf of the Department of Ecology,
4 thank you very much for coming to our workshop and our
5 public hearing. We appreciate your time, and this
6 hearing is adjourned at 8:18 p.m. Thank you.

7 (8:18 p.m.)

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STATE OF WASHINGTON)
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I, BETH L. DRUMMOND, do hereby certify that at
the time and place heretofore mentioned in the caption of
the foregoing matter, I was a Certified Court Reporter
and Notary Public for the State of Washington; that at
the said time and place I reported in stenotype all
testimony offered and proceedings had in the foregoing
matter; that thereafter my notes were reduced to
typewriting; and that the foregoing transcript,
consisting of 9 typewritten pages, constitutes a true and
correct record of all such testimony offered and
proceedings had and of the whole thereof.

WITNESS my hand and seal at Kennewick,
Washington, on this 12th day of January, 2002.

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Beth L. Drummond
CCR No. DRUMMBL273LA
Certified Court Reporter
Notary Public for Washington
My commission expires: 7-9-2005

DEPARTMENT OF ECOLOGY
PUBLIC HEARING ON PROPOSED CHANGES
TO THE WATER QUALITY STANDARDS

February 5, 2003
Vern Burton Community Center
Port Angeles, Washington
Public Comment 8:00 p.m.

.SP 1
LISA MC ANENY
Court Reporter
FLYGARE & ASSOCIATES
441 S. Second Avenue
Sequim, Washington 98382

.SP 2

February 5th, 2003
Department of Ecology
Public Hearing

SPEAKER: Bev Postin, Director of
Public Hearing

MS. POSTIN: I have a few things that
I need to read into the public record.

Let the record show it is 8:04 p.m.
on February 5th, 2003 and this hearing is held at
the Vern Burton Center located at 308 East 4th
Street, Port Angeles, Washington.

The primary purpose of this hearing
is to receive public comments regarding proposed
changes to Chapter 173-201A Water Quality
Standards for Surface Waters of the State of
Washington and to receive comments on the draft
environmental impact statement.

The legal notice of this hearing was
published in the Washington State Register on
January 3, 2003, Issue Number 03-1-123. In
addition display ads announcing the hearings were
published in the following papers:

January 15th, 2003, the Olympian;
January 23rd, 2003, the Wenatchee

World; Spokesman Review; Tri-City Herald; Yakima Herald;

January 30th, 2003, Bellingham Herald; Seattle Times Post Intelligencer; Peninsula Daily News; Aberdeen World; The Columbian in Vancouver; and the Longview Daily News.

Ecology also mailed out approximately 3320 announcements, 530 e-mail announcements, and 621 CD's to potential interested citizens, regulated businesses, governmental officials and every city, county, and Tribe in the State of Washington.

The Department of Ecology is expecting to adopt the proposed changes as well as the draft environmental impact statement no later than July 1, 2003. Federal regulations require that state water quality standards be reviewed and approved by EPA for compliance with the Clean Water Act prior to use. The EPA has 60 days to approve or 90 days to disapprove the state adopted standards. If the state quality water standards are disapproved by EPA because of the non-compliance with either the Clean Water Act or Endangered Species Act, the EPA will promulgate new standards on behalf of the State or seek alternate measures. The new water quality standards will not take effect for approval of activities until covered under the Federal Clean Water Act until this process has been completed.

Okay. At this time when I call your name if you would please come forward, have a seat, read your name into the microphone and begin your testimony. We will go ahead and take public comments and the first person I have and I apologize if I mispronounce your name, Glenn Gately. Mr. Gately will be followed by Margaret Grover. Please have a seat, sir.

GLENN GATELY

Port Hadlock, Washington

My name is Glenn Gately. I work for the Jefferson County Conservation District and I do water quality monitoring for the District. I've worked for them ten years doing this and I also have ten years working as a fishery biologist for the US Fish and Wildlife Service, also in the field of the water quality.

First of all on the subject of bacteria, I just want to say that I'm glad that Ecology has changed the parameters from enterococci to E-coli because I do like the fact that it's consistent with the fecal coliform parameters and that are all our data and establishing trends are trends that will continue rather than starting over again. So I'm happy

about that change.

On the subject of temperature, in Jefferson County, two of our most pristine streams are Salmon Creek and Snow Creek. Our upstream monitoring stations- which have only forest lands above them which have not been recently logged which have sustained timber now- I monitored the temperature with temperature data loggers collecting hourly data, been doing this for several years, but I applied the new proposed standards to data collected in 2001 and 2002 and what I found was that both Salmon Creek and Snow Creek would have failed this criteria- and of course the temperature only gets warmer as it goes down stream. So I'm thinking that 16 degrees may be a bit stringent.

I realize that there's-- that natural conditions as was mentioned earlier, but maybe the 16 degrees is set a bit too low to having these pristine streams fail that criteria.

And I-- just to mention another possibility, we found that our streams would pass if we had 18 degrees during the summer temperatures and then 14 degrees later on around October 1st or September 1st, that would hopefully protect the spawning salmon. So just a suggestion there.

On the subject of dissolved oxygen, again looking at Salmon Creek and Snow Creek, and let's say they were actually meeting the 16 degree temperature standard, at 16 degrees the hundred percent saturation is very close to the criteria, 9.5 milligrams per liter. At 716 millimeters of mercury it's 9.9 and goes down to 9.5 around 735 millimeters of mercury. So, our worse months would be the summer months, July, August and September. I feel that you'd have to be virtually getting a hundred percent saturation in order to meet the criteria which is unlikely. Generally in spring we're in the neighborhood of 80 or 90 percent and it would really only take one bad month to bring the average down if you had 3 months of low (sic) measurements and I see that the same criteria of 9.5 milligrams per liter of char- and char are generally in upper elevation waters where it's cooler and more gradient or oxygenation so this may be realistic for char, but the same standard is also used for the trout and salmon and I wondered if it isn't too stringent that we are just going to be bumping this criteria even on our best conditions in Salmon and Snow creek.

And I just want to read -- oh, regarding this too, I work for the Conservation District as I said and we are working with land owners, farmers, a lot in trying to establish

recording cover, we have a program for planting trees and so on and we have been doing a lot of tree planting because there are areas where the springs are wide open and no doubt we can do better. But I just want to voice this and that's that if we are setting standards that are so stringent that we're flunking where they're coming out of pristine forests, and they end up on a 303 D list where we can make improvements we may be just losing that incentive. In other words, if we have failed the standard coming out of pristine conditions what incentive is there for doing a lot of planting? And to follow up on that comment I just want to read a quotation from the 2002 State of the Salmon report for the Governor's Salmon Recovery Office, on page 22 there's a quotation that says;

"A scientifically credible strategy should be based on identifying what is possible, attainable, and sustainable."

So, again, I think that if we are going to have a good incentive for land owners to do better it certainly needs to be attainable. Thank you.

MS. POSTIN: Thank you. Marguerite Grover

MARGUERITE GROVER
Sequim, Washington

I'm Marguerite Grover, I live at 103 Pond Lane and we have been here for 24 years and we are a small business owner. We own Peter Black Real Estate in Sequim, so I was interested in the small business economic impact statement and on page one I'd like it to be explained the disproportionate impact on small business, exactly who the small businesses are and won't these costs ultimately pass through to end users meaning the customers and the home or property owners?

I would like on that same page, page one, it talks about-- there's criteria question; did the water body reached naturally limited, did the criteria of the water body change and I'd like examples of businesses that actually reflects those criteria questions, how that would affect those businesses and why there's this disproportionate impact.

And, then the next statement down at the bottom where it talks about that the permit limit is chosen by businesses and not prescribed by Ecology. In reality, permit limits are set by government and normally like the storm water manual, ecology gives guidance to those government agencies on what those guidelines should be, so they're not really chosen by businesses.

It also talks about other lowered cost mechanisms also indicated in the disproportionate impact and I'd like to see what some of those lower cost mechanisms are.

And then, on page 2 there's a description of a proposed changes as they affect business, and I'd like an example to be cited of a proposed change that would trigger one of the two points that were addressed and the points were direct points, sort of discharge the water and various business discharge waste water to publically owned treatment works.

And then, looking at that and looking at the proposed anti-degradation, I note down at the bottom that Federal requirements are exempt from analysis and so if they are-- if the publically owned treatment works are also under the Federal requirements, I just want that clarified a little bit.

And I also want it clarified where you talk about the costs not being addressed in that same section, the anti-degradation, were they not addressed because the updates are mandatory? It talks about making requirements that are implicit in the existing rules, explicit and no cost was modeled because you're just making clarification but I need a further clarification on that.

And, let's see, oh, also there on page 3 it talks about specific water body reaches will be more constrained and it talks about these are reaches where the stream doesn't naturally exceed the current standard and where the proposed temperature standard is lowered. Are you talking about you're going to lower-- in other words, you have this general standard, we have talked about the 16 degrees, you are going to lower the temperature standard in certain areas? And if you are we need to know where those reaches are and we have in Clallam County some-- just like in Jefferson County, some portions of our lakes and our creeks that may naturally exceed the current standards and they're limited to only a 3/10 degree Celsius change in temperature and I was kind of wondering how they arrived at that figure and what the impact is from that particular change.

And then, finally on page 4, under dissolved oxygen standard, it talks about the fresh water reaches including lakes and I'm wondering if that pertains to all lakes or only the lakes that have been identified and listed as being impaired. So, I have question about that. Thank you. I'm sure there's going to be more because I have not read all of it but at least we have an opportunity to put it in writing. Thank you.

MS. POSTIN:Larry Williams and Mr.
Williams will be followed by Barbara Kitchens.

LARRY WILLIAMS

Port Angeles, Washington

My name is Larry Williams, mailing
address Post Office box 2306 Port Angeles.

I'm a member of the Port Angeles City
Council. Thank you for the opportunity to
comment. I'll make my remarks fairly brief.

I was alerted to today about 8:00
o'clock this morning to this meeting. I
understand that you did publish a notice in the
paper as you indicated on January 30th. I looked
at the web cite this morning, didn't find a whole
lot about all of this and I understand that we
sort of stumbled onto this public hearing tonight
quite by accident.

In listening to the presentation I'm
a little perplexed why ten years worth of work
needs to go through a public hearing process that
is about a week and a half long. There's eight
different presentations, we are number 7, all the
rest of them started well back in January 27,
last week. There's 103 pages and I printed out
this afternoon that are changes in the Washington
Administrative Code, there's another 50 to 100
pages in the Ecological Impact Statement. We
have until March the 5th I believe it is to
review this and comment.

Um, I'm sure we are going to have a
little discussion about this with our
Legislatures when we go down and talk with them
during the Association of Washington Cities visit
to the hill in a couple of weeks.

On page 2 in your definitions, it
drew my attention to A-K-A-R-T-- I don't know if
you pronounce that acronym "akart" or what, and
your best management practices. I understand
that this eludes to the Western Washington storm
water manual. That is of grave concern to us in
this area and we will need to look at this
document very thoroughly. We have already
commented on the use of the Western Washington
storm water manual, I have some serious
reservations about the ecological impact that it
has on this county and on the City of Port
Angeles.

While I am not commenting on behalf
of the City of Port Angeles, I do have a vested
interest there.

MS. POSTIN:Thank you. Ms. Kitchens
will be followed by Sue Forde, F-o-r-d-e.

BARBARA KITCHENS

Silverdale, Washington

My name is Barbara Kitchens, my

address is PO 798, Silverdale, Washington.

I'm with the Washington Association of Realtors. I work as a regional government fares director and I represent five counties, all Realtor members.

We have been working for about a week now in a task force method to get through the document and primarily all we have come up with is a lot of questions. I would like to extend gratitude and thanks to Andrew who this evening spent time with me to address many of our questions and we will be preparing a written comment statement which we will send by March 7.

This Evening I would like to address our primary concern which would mirror Mr. Wilson's (sic) testimony. We have worked extensively with the storm water manual and many of the counties that I represent have embarked on writing their own manuals and are looking at alternate sources. And it very clearly states within the document, the manual itself, that it's not mandatory for adoption and that there's no jurisdiction; but if you reference the document in a WAC, I have to believe that that document is then going to have some authority. And I question both the mixed messages to local governments and the confusion to the general public.

I understand that the document was written to be used as a tool and I find it concerning that it's referenced and included within something that's being amended for law.

In addition to that, we do have some concerns about the financial impacts and we are looking for some type of explanation as to the stated figure of for small businesses of \$40,000 per employee- and we are struggling with that scenario and exactly what that entails. We need a type of explanation to that so that we might either offer input or look at-- help you look for some alternatives. Our State is in terrible economic problems and as a real estate industry we want to protect the environment and do the right thing but some of this stuff has to be done with balance and a small business with ten or twelve employees can't afford a \$40,000 bill and that is what that calculates out to be. So any help you could give us would be greatly appreciated. Thank you.

MS. POSTIN: Sue Forde and Ms. Forde will be followed by Bill Peach.

SUE FORDE

Sequim, Washington

My name is Sue Forde, I'm a small business owner in Sequim, Washington, my address is PO Box 3457 in Sequim. And I too found out

about this proposal-- proposed changes about a week ago. Been real busy with work but I've tried to look at a few things and I plan to review it more carefully.

I did-- have done some research involving the storm water management plan model and I did a white paper on that and that concerns me a great deal and I notice the reference to storm water in this document as well. And it seems to imply that that would be a requirement in some way.

Some of the terminology that this used in this document in the new changes are ambiguous and open to interpretation. As an example, one statement says under other water quality criteria and applications;

"Aesthetic values must not be impaired by the presence of materials or dirt effect excluding those of natural origin which will offend the senses of sight, smell, touch or taste."

And I thought what does aesthetic value mean? So I looked aesthetic up in the dictionary and that says;

"A guiding principle in matters of artistic beauty and taste, artistic sensibility, also perception by feeling; the theory or philosophy of taste; the sign of beautiful in nature and art."

So my question would be who determines what is artistically beautiful? Since these rules are being made and enforced by the Department of Ecology I would assume or presume that the perception would be determined by a staff. That doesn't take into consideration individual's different perceptions as far as what looks nice and what doesn't look nice.

For instance, a house might be remodeled and painted brown and maybe somebody in the staff says well brown is not an acceptable color so you have to paint it green. I mean, that's a stretch but under this definition, you know, or under this statement it really leaves it wide open.

Another item that caught my eye was about modeling, the use of modeling. And modeling carries some problems with it. I've done some research on modeling and one of the statements that I have gotten from the US Geological survey, Mr. Bartholomew (sic), John M. Bartholomew, US Geological Survey, he wrote a paper entitled Modeling Uncertainty;

"Inherent measurement errors include equipment failure, human error, the natural variabilities through space and time." For instance, the measurement is taken in one place with the assumption that the measurements are

widely representative. Modeling errors are composed of errors in estimating internal model parameters as well as the implication and assumption. Borrowing from other models is an example or combining sub-components that should not have been involved or inserting elements that should have been omitted are a couple of the concepts that he talks about. He expressed in his report that he is troubled about the errors to be found in modeling and casts doubt on the competence in the modeling we (sic) have done to answer specific questions; the use of optimum fish growth to set standards, the fact that standards are extrapolated from laboratory studies where fish live in a diverse environment, the use of fixed seasons in the proposed rules in an attempt to regulate nature to comply with temperature and oxygen standards between fixed dates is not in my mind sound science.

The use of a one size fix-all for the entire state is not sound science.

The exclusion of thermal references where fish avoid high temperatures is not sound science.

This use is primarily restrictive and human actions are not allowed to further lower the water quality. The Department of Ecology says it will take, quote, "appropriate and definitive steps to bring the water quality back to levels which meet the water quality standards."

One wonders what the agency considers appropriate and definitive, and at what cost- especially the farmers for whom we rely on our food supplies.

The assumption is made that pollution exists in our rivers, lakes and other water bodies and it's an assumption. This assumption is not scientific-sense based. The use of models is one ramification of that as well.

The new rules using a use-based maximum temperature limit is largely without scientific report. Scientists with the Oregon Cattlemens Association was called upon to present her findings to the Skaggit County commissioners. Her findings noted that no data collected prior to the inception of the critical areas buffer there established pollution problems- and this goes into how they collected their data and it showed that that was the case- and here's a example of regulations required for no reasons since there was no pollution.

She also explained that the laws of physics, the air mass that surrounds rivers and creeks determine that waters temperatures, reaffirming that shade is not cool water. Near record returns of salmon in recent years have led

credible researchers to believe that improved ocean conditions is the major factor in the turn around of wild and hatchery salmon- and, as we know, we have had the largest return with that 25 year cycle.

Last but not least is the cost. The cost to implement these new proposed rules could be back breaking, especially to small business. In a time when our State has the third highest unemployment in the Nation we need to be looking at ways to help new and existing businesses, especially small businesses- which have always been the back bone of this Nation's economy- not cause more of them to shut down.

So, that's my comments.

MS. POSTIN: Thank you. Bill Peach and he will be followed by Steve Marble

BILL PEACH

Forks, Washington

My name is Bill Peach, I'm the regional manager for the Rayonier Corporation. Thank you for the opportunity to testify on the water quality standard revisions. I commend the Department of Ecology for the open public process they are using to develop these standards.

I support the adoption of the new standards. I support Ecology's proposal that regulated activities such as forest practices that are consistent with the Forest and Fish Report based forest practices rules should not have to go through any additional review for tier II under the anti-degradation implementation plan.

The Forest and Fish report based forest practices rules anticipated changes in water quality standards and already addressed goals of anti-degradation as described in the Clean Water Act.

The Forest and Fish Report and forest practices rules have already gone through the Ecology review and the public process.

These standards can be implemented in the field and I manage approximately 150,000 acres of timberland in Jefferson and Clallam counties. Through careful planning, training and solid commitment to the Forest and Fish base forest practices rules, Rayonier successfully implemented these standards on our timberlands.

In addition to my experience with the Forest and Fish based forest practice rules, I have actively participated in the salmon recovery effort. As a member of the WRIA 20 of the member salmon and watershed planning group, I have firsthand experience with the tangible results of the group's efforts.

p I've mentioned only two of the many

efforts to restore salmon runs. Each one is impressive, but taken collectively, they represent an unprecedented effort anywhere in the United States to restore native salmon runs. I urge you to adopt the new standards.

MS. POSTIN: Okay. Thank you. Mr. Marble?

STEVE MARBLE

Sequim, Washington

Hello, my name Steve Marble. I reside at 835 Fawndale Place and like many of the previous speakers I have concerns about the economic ramifications of rules.

On page 6 for example we reference public-owned treatment works-- some publically owned treatment works will be affected by the proposed amendment, which begs the question can DOE explain who decides which ones and what criteria will be addressed to determine that process.

And further down on that same page, you're talking about industrial permits. Ecology doesn't know which mechanisms permit use will choose since DOE signs off on many permits what mechanisms are really available.

And then, on page 7, in most places the proposed changes would have a marginal impact on permits- you say in the second paragraph. Can DOE explain in layman terms what marginal is? Is it \$500? Is it \$5000? What marginal impacts are we dealing with here?

And also further down the page can Department of Ecology explain the model basis for the Monte Carlo run for sensitivity tests and the cost of \$40,000 per employee to small businesses?

And on page five, with the problems we are having in the economy right now our State can not continue to add to the burden of industry. Of primary concern in the list you have on page five are fresh and frozen prepared fish, canned fruits and vegetables, saw mills and paper mills, paper mills, concrete products, electric circuits, we need to seek a balance and these do not consider the economic stability of our State. That's as far as I got.

MS. POSTIN: Thank you. Mr. Bell.
Mr. Bell will be followed by Norm Schaaf.

HARRY BELL

Port Angeles, Washington

I'm Harry Bell. I work for Green Crow corporation, a family tree farm here on the Olympic Peninsula, mailing address is 805 East 8th Street, Port Angeles.

In your proposal, the

anti-degradation protection for tier II waters can be found in the form of NBDES (sic) or 401 permits or other water pollution control programs authorized or implemented or administered by the Department of Ecology. I'm assuming that the other water pollution control programs include safe water practices, rules and regulations that resulted recently from State legislation, and designed specifically to protect water quality.

ØI notice that the protection for tier III waters do not include other water pollution control programs and I'm assuming they do not include the State forest practices rules and regulations.

Looking at the description of tier III waters, proceeding conditions, the habitats, water, their high quality recommendations reference uses, all our streams on the Olympic Peninsula can fit into this tier III category. My current concern is that the tier III category will eventually be used to impose stream protection measures that go beyond the State forest practices measures that were intended by the Legislature and acts enacted by the forest practice boards.

I note though that your proposal directs the Department of Ecology to consider the economic impact to local communities when considering tier III classification. However, I feel that this balance should not be done by the enforcement agency, I think it should be done either by the State legislature or the Governor who can objectively weigh protection benefits against the economic impacts. This creates enormous uncertainty for timberlands owners on the Olympic Peninsula.

Except for this tier III issue, there's some good things in your proposal and I urge you to adopt the rest of them.

NORM SCHAAF

Port Angeles, Washington

My name is Norm Schaaf. I'm the timberlands manager, Merrill Ring (sic). I live at 785 Little Loop Drive in Port Angeles.

Merrill Ring owns about 55,000 acres of forestland in Washington State. Thank you for the opportunity to testify and in general I support the proposal that has come forward and in particular the use of the best available science in drawing the regulations and in making the inclusion that are supported by them; in particular again, as to how those-- that science has been incorporated in the forest practices rules through the Forest and Fish report and how those are part of this proposed change in regulation.

The forest practices rules as they are now provide for 100 percent of shade requirements on forest streams that have fish in them and I don't think that there needs to be any additional requirements imposed in order to achieve stream temperature. Shade is basically going to provide the ambient conditions that will result in water temperature that is suitable for fish.

However, we do have instances where full shade is not able to meet the temperature requirement. One example was given earlier in testimony, we have documentation on some of our properties on the South Fork of the fish rivers example where stream temperature has been observed over several years in pretty much a old forest condition and the stream temperature barely met the standard that is being recommended even though there has been not harvesting up the stream from the monitoring sites.

I'd also like to note that in those areas we have very healthy and very strong populations of native Coho, so I'm not sure exactly what the correlation is there if the Coho do not seem to be limited by the stream temperatures that we have.

The Coho populations in areas where we have done some manipulations to red herring habitats through forest practices through salmon recovery funding mechanisms of the state actually have the highest populations of Coho salmon in any stream in the northwest part of the State of Washington- that's documented by science, it's an unpublished report at this time with research in progress.

But this is in an area where we at best barely meet the temperature requirements and at times would not meet the temperature requirements, so I do believe that the temperature requirements may be somewhat more stringent than necessary based on our experience and based on the very vibrant salmon populations that we have there.

I'd be happy to get more documentation, I'm sorry that the report is not published yet or I would give it to you.

Another concern in the same area is that our streams passed from the forested condition in to what I could call a mixed use area where it's a mix of farms, rural, residential, forest and back and forth again. It doesn't stay in one particular use, it moves back and forth through them. Forest owners are very highly regulated as to what they can do alongside the streams. The rural, residential and farm owners in that same area do not have the same regulations and because of that the activities on

some of those lands may have resulted in temperature or other conditions in the stream that do not meet the standard.

The forest owner should not be penalized through regulation forest activities of adjacent land owners.

In a related area there's a opportunity for designation of, quote, "outstanding resource water," end-quote. But there's not a definition exactly what constitutes outstanding resource water. And once again it should not be used to penalize a land owner who has actually achieved outstanding resource water because of good practices. In other words, they should not receive a higher level of regulation than what they already have when there's good management that has resulted in that outstanding resource water.

So, thank you for listening, for the opportunity to comment.

MS. POSTIN: Okay, thank you. Okay, looking at the sign-in sheets I don't have anyone else who indicated they would like to testify -- we have a couple-- the lady up front, if you could please come up and state your name for the record.

CAROL JOHNSON

Port Angeles, Washington

My name Carol Johnson and I am the executive director of the North Olympic Timber Action Committee, P.O. Box 1057, Port Angeles, Washington.

More than a decade has been devoted to forest practice rules and regulations on Washington State forestlands to meet Water Quality Standards. The North Olympic Timber Action Committee supports the Department of Ecology proposed standards of aquatic life use based on best scientifically derived data; water temperature criteria, and acknowledgement that forest practice, like Forest and Fish, anticipated changes in water quality standards and already address the goals of anti-degradation as described in the Clean Water Act.

We believe that the State of Washington meets the strictest forest practice rules in the United States and the world in an effort to restore and improve salmon runs and improve the overall quality of thousand of miles of streams and still provide an economically viable timber industry.

Here on the Olympic Peninsula, we enjoy some of the cleanest water and most abundant fish populations in the state. These are some of the benefits of active forestland management.

NOTAC would like to thank the Department of Ecology to allow open discussion with a variety of groups and especially for bringing this public meeting to our community. Thank you.

TYLER CROW

Port Angeles, Washington

My name is Tyler Crow and I work for Green Crow Corporation here in Port Angeles, 805 East 8th Street.

We at Green Crow make every effort to meet the forest practices regulation in both our timber harvest and growth-yielding programs. In some cases we exceed the necessary measures in order to provide additional protection to stream-dependent amphibians and fish in all their stages. We strongly support both the proposed stream temperature criteria as there are many streams and coastal areas in Washington, there's occasionally warmer streams found throughout the remainder of the state. These warmer streams have also proven to be abundant with fish as previously stated by Norm Schaaf.

We also support the proposed used space criteria as long as this assignment is made using publically available scientific data that exhibits the viable populations contributing to the biological community.

MARK DEROUSI

Port Angeles, Washington

Mark DeRousi, P.O. Box 1372, Port Angeles. I'm here also to just express my concerns on the intertwining of the storm water manual that's been referred to and the proposed affects.

First of all let me clearly state that we're not referred to that manual or clearly state that it's optional as it's use was intended. We spent our-- I'm a local Realtor and in our industry along with the building industry, spent quite a bit of time working on the storm water manual which yet is to have revision that I know of, hopefully the input training at these public hearings will make some changes instead or as well.

I also have some concerns with some of the definitions in the proposed text just because they're a little over my head and on page 4 of the-- existing uses means those uses actually attaining fresh water on or after November 20, 1975 whether or not they were designated uses-- and put comprised of non-self reprecating (sic)--

(Speaker was inaudible, reading into the record. Speaker was going to give court

reporter a copy of the form he was reading from, Ms. Postin did not forward.)

I think that there can be some-- I guess in an attempt to make it very clear it makes it a little difficult for some of the average people to understand it and in fact, the average people as well the scientists. So that's all I have. Thank you.

MS. POSTIN: Is there anyone else who would like to provide testimony--

(No response)

Okay, all the testimony that was presented at this hearing and the other 7 hearings as well as any written comments that are received are part of the official record for this proposal and everything will have equal weight in the decision making process.

The public comments period ends on March 7, 2003 at 5:00 o'clock. Please submit written comments to: Susan Braley Department of Ecology, P.O. Box 47600þ, Olympia, Washington 98504-7600ú. Written comments mailed must be postmarked by March 7, 2003. You may submit comments by e-mail to Sue and this is not case sensitive; swqs@ecy.wa.gov. Comments may also be received via fax 360-407-6426.

All oral and written comments received during the public comment period will be responded to in a document called a Response to Comments Summary that will state Ecology's official position on the issues and concerns raised during this public comment period. That document should be available around June 23, 2003. It will automatically be mailed out to everyone who provided oral or written testimony and who also provided us with return address information.

I stated earlier the Department of Ecology is anticipating the adoption of this regulation to occur no later than July 1, 2003.

On behalf of the Department of Ecology, thank you so much for attending our work shop and public hearing. We appreciate your comments and time and this hearing is adjourned at 8:54 p.m. Thank you.

PUBLIC HEARING
ON
REVISIONS TO WASHINGTON WATER QUALITY STANDARDS

FEBRUARY 4, 2003 - 8:00 P.M.

SEATTLE, WASHINGTON

Reported by: Gwen C. Alexander, CCR
CCR No. ALEXAGC406J6

Whereupon, the following proceedings were
had, to-wit:

* * * * *

MS. BEV POSTON: Let the record show it is
8:04 p.m. on February 4th, 2003, and this public hearing
is being held at the Seattle Center, Northwest Rooms, in
particular the Lopez Room, located at 305 Harrison Street,
Seattle, Washington.

The primary purpose of this hearing is to
receive public comments regarding proposed changes to
Chapter 173-201a, Water Quality Standards for Surface
Waters of the State of Washington, as well as receive
comments for the draft Environmental Impact Statement.

The legal notice of this hearing was
published in the Washington State Register on January 3rd,
2003, Issue No. 03-01-124. In addition, display ads
announcing the hearings were published in the following
papers: on January 15th, 2003, the Olympian; on January
23rd, 2003, the Wenatchee World, Spokesman-Review,
Tri-City Harold, the Yakima Harold; on January 30th, 2003,
The Bellingham Harold, Seattle Times, Post-Intelligencer,
Peninsula Daily News, Aberdeen World, the Columbian in
Vancouver and the Longview Daily News.

The Department of Ecology also directly

mailed out approximately 3,320 announcements, 550 e-mail announcements and 621 CDs to potential interested citizens, regulated businesses, government officials and every city, county and tribe in the state of Washington.

The Department of Ecology is expecting to adopt the proposed changes as well as the draft Environmental Impact Statement no later than July 1st of 2003. Federal regulations require that state water quality standards be reviewed and approved by the United States Environmental Protection Agency for compliance with the Clean Water Act prior to their use.

The Environmental Protection Agency has 60 days to approve or 90 days to disapprove the state-adopted standards. If the state water quality standards are disapproved by the Environmental Protection Agency because of noncompliance with either the Clean Water Act or the Endangered Species Act, the Environmental Protection Agency must promulgate new standards on behalf of the State or seek alternative measures. The new water quality standards will not take effect for approval of activities covered under the Federal Clean Water Act until this process has been completed.

At this time we have some folks who have indicated they would like to provide testimony tonight. And the first person to sign up is Mr. Norm McDonnell; and

Mr. McDonell will be followed by Mr. Ben Harrison.

MR. MCDONELL: I appreciate the opportunity to comment on the proposed water quality standards. My name is Norm McDonell. I was born in Ballard in 1924. Except for two years working in Oregon and World War II, I've been a lifelong resident of the state.

First, I support the proposed standards. Secondly, I compliment the Department on the open and thorough manner of their development.

I very much care about the environment and aquatic life. One example of how much I care about the salmon and other marine life is the countless hours that I have spent writing the governor, legislators, agency directors and others to campaign for the removal of the derelict monofilament fishing nets.

I was angered that our marine waters were plagued by these so-called ghost nets that are invisible and will continue to trap and kill salmon, sea birds and other marine life until removed.

Two years ago I participated with the Puyallup Tribe on a demonstration net removal project on the Puyallup River under the 11th Street Bridge. All the nets removed contained fish remains and some contained the remains of marine mammals. While there's some progress

being made on the removal of ghost nets, there's a long

way to go before these invisible traps are no longer a death sentence for salmon, sea birds, marine mammals and other sea life.

And as a matter of interest, when I was a kid in Ballard, there was a fish trap at North Beach. There were hundreds of them in the state of Washington and they were piling piers and very visible. The only difference today is that Puget Sound is plagued with these invisible nets that have been left there by fishermen as they become hung up and continue to catch fish.

I have tried to help remove the hidden dangers in our waters and improve the environment for our fish. There are many aspects to water quality. Water quality impacts all of us, whether we drink it, eat the fish that live in it, or swim in it.

At an early age I learned about the impact of water degradation, although at that time we didn't call it that. As a youngster in the '30s, in Ballard, the only place within walking distance to go swimming was Golden Gardens. Unfortunately, certain winds and tides would cause the untreated sewage from the West Point outfall to be carried directly onto the Golden Gardens beach. This of course would result in closure of the beach for

swimming.

Finally, many years ago a storage treatment

plant was erected and that water quality problem was solved. The hard work of concerned citizens over a long period of time and government resulted in identification and improvement of water quality.

Similarly, I've seen forest practices in our state steadily and vastly improve. Forestland owners have adapted their harvesting and road building practices to do their part to improve water quality and fish habitat.

I am now retired. However, early in my career as a forester I worked in Pacific, Grays Harbor, Jefferson and Clallam Counties. Those areas are blessed with some of the best conifer timber growing land in the world.

I was impressed then as we worked in the field by the bountiful returning salmon runs that we would witness in the coastal rivers and streams. The efforts now being made to provide suitable habitat for the returning salmon are to be commended.

The forest practice rules as outlined in the Forest and Fish Report anticipated changes to water quality standards and already addressed the goals of the antidegradation provisions as described in the Federal

Clean Water Act.

Therefore, I support the Department of Ecology proposal that regulated activities such as forest

practices consistent with the Forest and Fish Report be allowable because they have already gone through the public process and Ecology review. I appreciate that the DOE is protecting water quality while recognizing existing good processes and programs.

Thank you for the opportunity to express my support for the proposed regulations.

MS. POSTON: Thank you. Ben Harrison? Is Mr. Harrison here? Mr. Harrison will be followed by Kay Gabriel.

MR. HARRISON: I'm Ben Harrison and I too was born in 1925 and served on submarines during World War II, and after that I became a forester. I'm Ben Harrison, retired forester. I'm a forest adviser to the nonindustrial forestland owners.

A few years ago while installing a culvert, a DOE pickup stopped, an employee got out and approached our culvert. I looked at Mr. Riley, the landowner, and asked him, "What are we doing wrong?"

When the DOE employee arrived, he asked if he could take photos of our culvert installations. We

asked why he wanted photos of our installation. His answer was, "I've seen lots of culverts installed but this one is an example of good culvert installations on a steep grade and I'd like to take photos for educational purposes."

Our installation included a flume made from cutting a 12-inch culvert, ten feet long and half lengthwise and hinged it, allowing the water to flow gently down to disperse on some large boulders. This small stream feeds fish-bearing ponds and eventually makes its way to the Snoqualmie River.

This cooperation between a small land owner and the Department of Ecology shows that working together, we can have a better environment. And I want to thank you for the opportunity to express my support for your regulations.

MS. POSTON: Thank you. Okay. Kay Gabriel; and Ms. Gabriel will be followed by Janet Way.

MS. GABRIEL: Good evening, and thank you for the opportunity to make these comments. My name is Kay Gabriel and I am here representing the Weyerhaeuser Company. My comments will be very brief this evening, as we have submitted extensive written comment.

I too want to speak in support of the water

quality standards. We do commend you for what we believe has been a very deliberative, open public process. I know there are many within our industry that think Weyerhaeuser is very process oriented so I can say we know a good process when we see one.

And we certainly believe that yours has been because of the many open meetings, workshops, public hearings. There has been a great deal of extensive record built and it has demonstrated that these proposed rules are based on sound science, and we certainly believe that that's the important thing to do so we commend you for the process which you have used.

Regarding the use-based format, we believe that assigning of aquatic life use should be based on scientifically derived, publicly available data which demonstrates that there is a viable self-sustaining population that makes a significant contribution to the biological community. We also support the assigning of uses based on current available methods to determine where salmonid populations are present.

In addition, we strongly support the Department's proposed temperature criteria for char, salmon, steelhead and trout spawning and rearing. The criteria are built on methods that are scientifically

based, objectively derived, repeatable and protective of the proposed uses. And we believe that they afford full protection for native salmonids.

We also support the use of a single year-round spawning and rearing criterion; we believe that's very important. And finally, we do support the

Department's proposal that regulated activities such as forest practices that have already gone through a Department review and public processes should not have to go through further review.

Thank you for the opportunity to comment.

MS. POSTON: Thank you. Janet Way; and Ms. Way will be followed by -- I believe this is Brad Axle. I apologize if I mispronounced that.

MALE SPEAKER: (Inaudible.)

MS. POSTON: Okay. That's fine.

MS. WAY: Hello. My name is Janet Way. I'm president of Thornton Creek Legal Defense Fund and I've also been a member of the Thornton Creek Watershed Management Committee which was funded by a Department of Ecology grant. And we've been working on a watershed action plan for the past five years for Thornton Creek in Seattle, which is the largest watershed in Seattle, which has five species of salmon and it's important, a very

important resource to the citizens of Seattle.

I just have some -- a few comments. I don't really have a prepared text because I expect to submit written comment, but I just wanted to point out a few things that I'm concerned about.

I've been involved in a number of appeal issues and watchdog issues in the watershed, in the

Thornton Creek watershed, and one thing that I've noticed is that citizens of Washington and citizens of Shoreline and Seattle have come to expect the Department of Ecology to stick up for their watershed and their water quality in their specific stream reach.

And I just want to make sure that your new standards in fact really do ensure that the water quality is being protected and that when a citizen calls the Department of Ecology, a qualified staff will come out and take it seriously, especially in the urban areas, and look at the situation that's being reported.

And I'm sure -- I know that they have great integrity but we just want to make sure that they take the time to really inspect the situation and find out indeed whether there is a problem and -- because our experience is that, to be honest, that developers that we've observed often try and get away with stuff. It's not any news to

anybody but that's what we've observed. And we really depend on the Department of Ecology to try and hold out for the highest standards.

So commenting specifically on the standards, the new standards that you're proposing, one thing I wanted to point out is that we should ensure against there being large loopholes through which developers are able to walk because it's hard enough to try and ensure and hold

developers to a standard, but when cities allow variances and there are plenty of loopholes that they can wriggle through, it's very difficult for citizens.

And citizens are really the bottom line, the last holdout, the last way for -- to really ensure that the standards are upheld. Because if citizens are not allowed to do the proper legal appeal process and public notice that's necessary, then all kinds of bad things happen to good fish in the watershed, and it's really up to the citizens when it comes down to it, to really make sure that the city's codes are enforced.

And our experience is that the cities will seem to find a way to help developers get away with murder, to be blunt. That's our experience.

Also, I'm concerned that there might be ambiguous criteria in these regulations that would lessen

the standards when herbicides and pesticides are applied. All the citizens of Seattle and Shoreline specifically expect that herbicides and pesticides will only be applied in amounts that are not toxic to the environment. They assume that these standards are being applied and any lessening of where it is now is just not acceptable because it's already bad enough.

And we see the results of that every day with -- especially in urban creeks like Thornton Creek.

We've seen reports of tests that have been done in Thornton Creek reported on by Washington Toxics Coalition, for instance, that shows large amounts of toxic chemicals that are still found in Thornton Creek, and it's not acceptable.

Also, I just wanted to mention that your standards should ensure that there is adequate water quantity as well as water quality in especially urban streams but any streams in the state, because in-stream flows are obviously crucial for fish migration. And nowadays with the vast amount of impervious surfaces and detention that is allowed by municipalities for development, the in-stream flows are becoming reduced so much that they can't sustain the fish.

And lastly, I just wanted to mention that I

hope you're not depending on the Bush administration to ensure that your standards are upheld. I hope to God that you are going to hold out and stick up for Washington state and not expect the Bush administration to dot your I's and watch your P's and Q's because as we've seen with a lot of other issues going on with the Bush administration, they're throwing the baby out with the bath water.

We're counting on you so I hope you will really stick up for the fish and the people of Washington

state. Thank you.

MS. POSTON: Thank you. Connie Kelleher; and Ms. Kelleher will be followed by Erik Espenhorst.

MS. KELLEHER: Thank you for the opportunity to comment. My name is Connie Kelleher and I'm commenting tonight, both on behalf of myself, a fourth generation Seattle native and a lifelong Washington resident, but also on behalf of American Rivers.

American Rivers is a national nonprofit conservation organization dedicated to protecting and restoring healthy natural rivers and the variety of life they sustain for people, fish and wildlife. Our Northwest office is based in Seattle and we serve over 2200 members in the region. In addition to my comments tonight, we're

going to submit much more detailed written comments by March 7th so I'll just touch on a few issues tonight.

Overall we're very deeply concerned with both the substance of many of the proposed water quality standards as well as Ecology's recent round table stakeholder process. After a ten-year triennial review, Ecology is now proposing water quality standards that show very little environmental improvement. In some cases they're even worse than before. These are big changes from the last draft of the rule that went out for public comment, which we commented on, and after Ecology held its

stakeholder meetings, which were primarily composed of various industries, the rules have gotten much weaker.

For example, the proposed temperature standards have now gotten hotter and hotter and they're about equivalent to those proposed by the pulp and paper industry. The proposed standards will not adequately protect our rivers. At a time when Washington state is working to protect salmon and their habitat, weakening water quality standards is simply unacceptable. We encourage Ecology to adopt more protective standards as outlined by the environmental community numerous times in previous comments.

For now I'd like to focus on a few specific

aspects of the draft rule that have not received as much attention but are critical to protecting our water resources. First, the proposed rule would grant a special exemption for dams that do not meet water quality standards. There's no reason why dams should receive this special treatment. The Clean Water Act does not provide such an exception and Ecology should not provide this either.

The ability of states to impose conditions on dams in order to protect water quality via 401 certifications is a critical and very powerful authority. Washington state has fought very hard to uphold its 401

authority in the face of numerous federal attempts to weaken it. Ecology should not be diluting its ability to implement this authority by allowing dams to escape the requirement to meet water quality standards.

Specifically, Ecology is proposing to allow dams up to ten years to come into compliance with water quality standards. This is simply unacceptable. Many of these dams have been operating for over 50 years and have had plenty of time to get into compliance already.

Before issuing any 401 certification, Ecology must find that based on all evidence, data and modeling, that the proposed measures in the plan provide

reasonable insurance that water quality standards will be met. This requires that the applicant do the requisite analysis of the proposed measures and include that analysis in its plan. If the applicant cannot illustrate reasonable assurance that water quality standards will be met with the proposed measures, the 401 should be denied up front.

Another issue I want to highlight is the provision for Outstanding National Resource Waters, otherwise known as Tier 3 waters. Tier 3 waters are the best of the best of our state's waters -- rivers, lakes, streams and marine areas that have outstanding water quality or other exceptional values and must be protected

from all future degradation. Washington is blessed with many exceptional ONRWs or potential ONRWs. Yet in the 30 years following the Clean Water Act, how many do we have? None. Ecology has never acted to designate any of these waters.

Many other states around the nation have done so, including Arizona, Colorado, Vermont and Florida. Have their economies fallen apart? No. What they have done is protect their best waters.

We're very concerned that Ecology has unnecessarily politicized the designation process in its

proposed rule by stating that Outstanding National Resource Waters should not be designated or substantial and immediate social or economic impact to the local community will occur. This is an incredibly broad and vague caveat and can prevent the protection of our most imperiled waters.

We are also concerned with the timing for acting on the citizen petitions to designate Outstanding National Resource Waters. Ecology has stated that these decisions will be made during the next triennial update. Even if the three-year time frame is strictly adhered to, this is simply far too long to delay the protection of our highest-quality waters. Currently healthy waters could be degraded in that time and no longer qualify for ONRW

protection. We recommend a faster time frame that will allow for designation within a year or less.

Again, we'll be submitting more detailed comments and we appreciate the opportunity. Thanks.

MS. POSTON: Erik Espenhorst. I hope I said that right.

MR. ESPENHORST: That's fine. Thank you. My name is Erik Espenhorst. I appreciate the opportunity to come out to Ecology's lugubrious consideration of water quality standards. I'd like to second everything the

previous speaker said, and I'd like to get away from the detail a little bit and make a comment.

I got here just before eight o'clock and I was like the sixth speaker to sign up. I think that says that Ecology has made this process inaccessible to the public. And on something that's as important as water quality standards, for there to be so little interest, for someone to walk in when a public hearing starts and be able to get in almost right away suggests to me that you've made this process too tedious, too abstruse, and you're not living up to Ecology's very bold charter in the law that created the Department.

Ecology is in the tenth year of a three-year review process, which sounds like something that Kafka or Orwell would have written but instead it's actually going

on and it's appalling. But I'm torn between asking you to actually take this opportunity to make some substantive improvements to the process, which would probably drag the three-year process out to 12 or 15 or who knows how long, versus simply adopting these standards before they get even worse, which they are compared to the previous hearing that I attended in Bellevue 18 months ago or so. I don't remember exactly when it was.

With natural resource -- with

aquatic-dependent natural resources on the brink of extinction in much of the state of Washington, to be adopting standards that have so many loopholes, that are so inadequate, is ludicrous. There is no margin for error anymore and yet these standards are well over that margin. There are so many loopholes.

The timber industry is largely exempt. The Fish and Forest Report exempts applicable covered forestland from having to comply with water quality standards. Apparently dams are exempt. If only they didn't have effects, it would be fine to exempt them but that's not how it works. This is crazy.

What I would like to see is Ecology to make broad use of the authority that it has to promulgate narrative standards, to adopt protective measures for aquatic species, i.e., salmon, all salmonids, bull trout,

macrobenthic invertebrates.

Jim Carr at the UW has been doing studies in this for years. It's well established scientifically the basis of doing benthic invertebrate, macroinvertebrate inventories and setting aquatics standards. Many of Jim Carr's -- since he started in Ohio, Ohio had adopted standards. He was down in Tennessee for a while; Tennessee has standards. He's been in Washington state

for several years as a professor; Washington state seems to be resisting this bit of science. I hope it ends.

Other narrative standards include all of the criteria that the National Fishery Service and the Fish and Wildlife Service have called properly functioning condition. These include things like large woody debris, in-stream pools, bank stability, sediment. Again, this is all within Ecology's authority to do. It's scientifically established and yet you're taking a pass on it. This is inexcusable.

Lastly, some of the specific criteria themselves. I was reading some of the literature and it said when we adopted these standards before, we didn't really know everything and so we're reviewing them. Well, there are studies from the 1950s, well before the state (sic) of Ecology adopted its standards, that would have argued -- that argued for much more protective standards

than Ecology adopted at the time.

What you're doing now is, again, looking at a range of scientific studies and trying to figure out well, where is it going to be sort of least inconvenient for industry and not likely to extinguish aquatic species, mostly salmon, because that is where a lot of the work has been done. That is not the approach you should be taking.

Ecology's charter, the Clean Water Act say making clean water is a national and a state priority. That emphasis should be reflected in your standards and I urge you to do that. Thank you.

MS. POSTON: Thank you. Okay. At this time nobody else has indicated on the sign-in sheets that they would like to testify so it could be that folks have had an opportunity to digest the information at the workshop and maybe they would like to say something for the public record, so I'm going to open up and ask if there's anyone else here who would like to provide testimony. No? Okay.

All the testimony presented at this hearing and the other seven hearings as well as any written comments that have been received are part of the official record for this proposal and will receive equal weight in the decision-making process.

The public comment period ends on March 7th, 2003, at 5:00 p.m. Please submit written comments to

Susan Braley, B-r-a-l-e-y, with the Department of Ecology. The address is Post Office Box 47600, Olympia, Washington 98504-7600. Written comments mailed must be postmarked by March 7th, 2003.

You may submit comments by e-mail to Susan. The e-mail address -- and this is not case sensitive -- is

swqs@ecy.wa.gov. Comments may also be received via fax and our fax number is 360-407-6426.

All oral and written comments received during the public comment period will be responded to in a document called a response to comment summary that will state Ecology's official position on the issues and concerns that have been raised during this public comment period. That document should be available around June 23rd of 2003. It will automatically be mailed out to everyone who provided oral or written testimony and who provided us with return address information. It's my understanding it will also be posted on our Web page.

As stated earlier, the Department of Ecology is anticipating the adoption of this regulation to occur no later than July 1st of 2003.

On behalf of the Department of Ecology, thank you for attending the workshop and hearing. This hearing is adjourned at 8:37. Thank you.

IN RE: DEPARTMENT OF ECOLOGY, PUBLIC HEARING

A F F I D A V I T

I, Gwen C. Alexander, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on February 4, 2003, at the hour of 8:00 p.m., at Seattle, Washington.

GWEN C. ALEXANDER, CCR
CCR NO. ALEXAGC406J6

Official Transcript

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12 AT SPOKANE FALLS COMMUNITY COLLEGE
13 SPOKANE, WASHINGTON
14 JANUARY 28, 2003, AT 8:11 P.M.
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24 REPORTED BY:
DAVID E. HIX, C.S.R.
25 Notary Public

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1 A P P E A R A N C E S
2

3 HEARING OFFICER: BEV POSTON
4
5 SPEAKERS (In order of appearance):
6
7 JOHN OSBORN STEVE CLARK
8 RACHEL PASCHAL-OSBORN
9 JIM HOLLINGSWORTH
10 WILLIAM SWARTZ
11 ROBYN MEENACH
12 MARK STOREY
13 MARK BORDSEN
14 GLEN COSBY
15 LARRY ESVELT
16 RANDY BALDREE
17 JEAN WARDWELL
18 ROB BUCHERT
19 NEIL BEAVER
20 DWIGHT OPP
21 HAL ROWE
22 KAREN LINHOLDT
23 MIKE PETERSON
24 JULIAN POWERS
25 ROBBIE CASTLEBURG

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1 P R O C E E D I N G S
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3 MS. POSTON: Please be seated, and we'll

4 begin the public hearing. Okay. Folks, at this point
5 we need to have all the discussions in the back to
6 cease. We need to make sure that we get a very clear
7 record of comments and concerns that are raised by
8 folks tonight, and if I can please ask folks to turn
9 off cell phones or beepers, anything that might
10 distract someone who is providing testimony tonight.
11 It would be appreciated.

12 Okay. This is the second of eight public
13 hearings that are being held around the state regarding
14 the Proposed Changes to the Water Quality Standards. I
15 want to give you a brief description on how the hearing
16 will be run.

17 First, when I call your name please come
18 forward to give your oral comment. When you signed up
19 outside on the table there was a box that said testify,
20 yes or no. There were several folks who indicated no.
21 But again, several folks who put a Y that they would
22 like to testify tonight.

23 There were also several folks who didn't mark
24 anything. So if you didn't mark anything and you
25 decide that there's something that you would like to

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1 testify to tonight, you'll be given an opportunity at
2 the end after all the other folks who indicated yes
3 they would like to testify. And if you said no and
4 then decided, oh, there is something I think I would
5 like Ecology to respond to, I'll open it up to you
6 folks also. So anyone who wants to provide testimony
7 tonight will be able to provide it.

8 Your testimony is being recorded by a court
9 reporter. It's very important for the Department of
10 Ecology to get a clear record of your comments, since
11 we will be responding to the issues and concerns that
12 are raised by you. If you have questions that you want
13 answered as part of the official response to comments,
14 I strongly encourage you to ask them at the time you
15 give your testimony. However, at this point in time
16 we're not in a question and answer mode.

17 Staff will be preparing a formal response to
18 all oral and written comments received during the
19 public comment period regarding these proposed changes,
20 and I'll give you more information on that later on.
21 And again, I would like to reiterate. If you can't
22 stay for the public hearing, and you have concerns or
23 issues that you want included as part of the public
24 record, we have the public comments center at the table
25 in the back with the forms on it.

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1 Please write down your comments, issues,
2 concerns, questions, whatever, and put it in the box.
3 I will make sure that it becomes part of the public,
4 formal record tonight. Okay. Are there any questions
5 at this point this time?

6 UNIDENTIFIED AUDIENCE: What are the time
7 limits?

8 MS. POSTON: Time limits are going to be

9 three minutes. We have 20 people at this point
10 indicating that they would like to provide testimony.
11 But a lot can be said in three minutes, and if you are
12 not able to get everything you want in your three
13 minutes, at the end let's see where we're at time-wise
14 for the evening, and you might have an opportunity to
15 come up if you need more time. Okay. Does that sound
16 okay? Okay. Let's begin.

17 I'm going to be over here. I have some
18 things that I need to have read into the record, and
19 it's just a legal formality that I have to go through,
20 and if you'd please bear with me. Okay. Let the
21 record show that it is 8:11 p.m, on January 28, 2003,
22 and this hearing is being held at the Spokane Falls
23 Community College, Student Union Building 17, Lounge
24 AB, located at 3410 West Fort Gorge Wright Drive,
25 Spokane, Washington.

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1 The primary purpose of this hearing is to
2 receive public comments regarding proposed changes to
3 Chapter 173-201A Water Quality Standards for Surface
4 Waters of the State of Washington. The legal notice of
5 this hearing was published in the Washington State
6 Register on January 3, 2003, Issue No. 03-01-124.

7 In addition, display ads announcing the
8 hearing were published in the following newspapers:
9 January 15, 2003, the Olympian; January 23, 2003, the
10 Wenatchee World, Spokesman Review, Tri Cities Herald,
11 Yakima Herald; and on January 30 of 2003, notices will
12 be published in the Bellingham Herald, Seattle Times
13 Post Intelligencer, Peninsula Daily News, Aberdeen
14 World, the Columbian of Vancouver and the Longview
15 Daily News.

16 Ecology also directly mailed out
17 approximately 3,320 announcements, 550 e-mail
18 announcements and 621 CDs to potential citizens --
19 excuse me -- potential interested citizens, the
20 regulated businesses, government officials and every
21 city, county and tribe in the State of Washington.

22 The Department of Ecology is expecting to
23 adopt the proposed changes, as well as the Draft
24 Environmental Impact Statement, no later than July 1st
25 of 2003. Federal regulations require that State Water

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1 Quality Standards be reviewed and approved by the
2 United States Environmental Protection Agency for
3 compliance with the Clean Water Act prior to their use.

4 The Environmental Protection Agency has 60
5 days to approve or 90 days to disapprove the state
6 adopted standards. If the state Water Quality
7 Standards are disapproved by the Environmental
8 Protection Agency because of noncompliance with either
9 the Clean Water Act or the Endangered Species Act, the
10 Environmental Protection Agency must promulgate new
11 standards on behalf of the state or seek alternative
12 measures.

13 The new Water Quality Standards will not take

14 effect for approval of activities covered under the
15 Federal Clean Water Act until this process has been
16 completed.

17 Okay. When I call your name please step --
18 come up here and sit and speak into the microphone.
19 Give your name, your address and who you're
20 representing, and please provide your comments for the
21 record. The reason that I'm having you speak into a
22 microphone is because I know other folks are interested
23 in what you have to say. And I have no problem
24 projecting my voice, but some folks don't project quite
25 as well, so I just want other folks to have an

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1 opportunity to hear what your comments and concerns are
2 also.

3 Okay. The first person who indicated they
4 would like to provide testimony is Mr. John Osborn.
5 And Mr. Osborn will be followed by Ms. -- and I
6 apologize if I mispronounce the name -- Rachel -- is it
7 Paschal-Osborn?

8 MS. PASCHAL-OSBORN: Yes.

9 MS. POSTON: Okay. And I will have a timer
10 just so that you know. I know it's a pain.

11 MR. OSBORN: My name is John Osburn. I'm a
12 physician here in Spokane. I'm here tonight as
13 Conservation Chair for the Upper Columbia River Group
14 of the Sierra Club. We have a membership of about
15 1,700, mostly in Washington State.

16 A couple of points that I would like to make,
17 and then I will also provide written comment. First,
18 we have a significant problem with the movement of
19 heavy metal wastes from Idaho into Washington, and we
20 are very concerned that the amended standards
21 incorporate standards for transboundary pollution.

22 And to elaborate this -- on this for just a
23 bit, we have a significant amount of heavy metal
24 movement with significant flood events. For example,
25 in the 1996 February flood, in a single day, over a

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1 million pounds of led flood into Lake Coeur d'Alene.
2 The lake is an inefficient trap for the mine wastes,
3 and a significant fraction of the mine wastes continue
4 on into the Spokane River contaminating our beaches and
5 poisoning the waters of the Spokane River.

6 For a river like the Spokane that is so
7 important to the history and culture of our community,
8 and yet has been treated as an industrial sewer, it is
9 critically important that these standards be recognized
10 and adopted in terms of the transboundary pollution
11 problems.

12 Secondly, I've had considerable experience in
13 Idaho with the Outstanding Resource Water Designation.
14 It's probably been at least ten years since this has
15 been an option for protecting waters in Idaho. It has
16 never -- there is not a single ORW been designated in
17 Idaho. And furthermore, the ORWs that have been looked
18 at in Idaho have been merely waters that are in

19 existing wilderness areas.
20 So while on the face of it the ORW sounds
21 appealing, the reality is that the only waters that
22 would likely end up as ORWs are those which are already
23 protected in wilderness systems and that are not
24 controversial. So the benefit to the public is
25 minimal.

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1 In closing, water is the quintessential
2 public resource. It is critical for a whole host of
3 reasons including the public health. These standards
4 need to recognize that, and I hope in the end are
5 significantly improved in order to protect the public
6 interests. Thank you.

7 MS. POSTON: Thank you. Okay. And
8 Ms. Osborn will be followed by Jim Hollingsworth, and I
9 can't tell if this is an N or a Y. I think you were
10 kind of keeping your options open. So if you would
11 like to provide comments, you're next.

12 MS. OSBORN: Is it all right if I turn it
13 this way?

14 MS. POSTON: Actually, I'd prefer it this
15 way, because I'm actually writing down what you're
16 saying.

17 MS. OSBORN: It's little hard not to be
18 facing the audience.

19 MS. POSTON: I'm reporting back to the
20 director and that's why.

21 MS. PASCHAL-OSBORN: Okay. Thank you. I'm
22 Rachel Paschal-Osborn. I'm a public interest water
23 lawyer here in Spokane, and I have many comments. But
24 I'll restrict my oral comments tonight to the issue of
25 flow.

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1 I'm astonished at the misinformation that was
2 provided during the Q and A session in response to my
3 question. Water Quality Standards have been used on a
4 number of occasions to protect in-stream flows in
5 rivers. There are obvious water quantity and quality
6 links related to the numeric criteria.

7 But beyond that, Ecology has used the
8 standards in 401 Certifications. For example, for the
9 dam on the Dosewallips River, the dam on Sullivan
10 Creek, the third runway project in Seattle and most
11 recently regarding problems with an irrigation district
12 in the Methow Valley to require that in-stream flows be
13 maintained in rivers for certain beneficial uses
14 including recreation and salmon migration.

15 Those uses have been -- are proposed to be
16 eliminated from these standards, and because of that
17 and the elimination of classification systems, it
18 appears that Ecology is attempting to repudiate its
19 responsibility to use the Water Quality Standards
20 process to protect in-stream flows.

21 I would -- my suggestion is you need to put
22 and explicit provision into the new standards regarding
23 flow requirements and that you restore the recreational

24 use and salmon migration uses as designated uses for
25 the standards as well.

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1 One other comment that I'll make is --
2 regards the averaging process for temperature and
3 dissolved oxygen. It's not clear exactly how at this
4 point you would determine a violation of temperature or
5 dissolved oxygen if you're having to measure an average
6 on either a 7 day or 90-day period. As it is, under
7 the acute -- existing acute toxic criteria -- Ecology
8 is required to do 24-hour averaging, and it's very
9 difficult to assess -- to accomplish that averaging and
10 assess whether violations are occurring.

11 So it's -- it's unclear how this would be
12 accomplished at all for even longer periods of time.
13 And I'll leave those remarks at that and submit written
14 comments as well. Thanks for the opportunity.

15 MS. POSTON: Thank you very much. You bet.
16 Thank you. Okay. And Mr. Hollingsworth will be
17 followed by Mr. William Swartz.

18 MR. HOLLINGSWORTH: Do you need my address or
19 anything like that?

20 MS. POSTON: Just state your name for the
21 record.

22 MR. HOLLINGSWORTH: Okay. I'm Jim
23 Hollingsworth. I live in Veradale, Washington, in the
24 Spokane Valley. The proposed amendments to the Water
25 Quality Standards set forth five new or expanded

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1 methods by which a polluter may obtain exemption from
2 the standards. It can be expected that polluters,
3 particularly large polluters, will focus on obtaining
4 one or more of these exemptions rather than undertake
5 efforts to reduce their pollution and comply with the
6 standards.

7 No. 1, overriding public interest allows high
8 level water quality to be measurably reduced based upon
9 economic factors. The proposed rules explicitly make
10 this exception available for Pollution Discharge
11 Permits and 401 Water Quality Certifications that
12 govern Federal projects.

13 No. 2, short-term modifications allow
14 temporary reduction of water quality conditions for
15 long-term operations up to five years and that is
16 renewable.

17 No. 3, variances allow a five-year hiatus,
18 renewable, from the standards if reasonable progress is
19 being made towards compliance.

20 No. 4, site-specific criteria allows
21 suspension of the standards when the stream cannot
22 attain them due in whole or in part to human changes.

23 No. 5, use-attainability analysis allows a
24 polluter to petition to eliminate one or more of the
25 already limited uses of streams. And finally, I'd like

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1 to say that from the point of view of somebody who
2 lives in Eastern Washington, any effort on the State of

3 Washington to maintain Water Quality Standards is going
4 to fall short if it does not recognize that we live in
5 a watershed that we share with another state, Idaho,
6 and that Washington should make every effort that it
7 can to come to some type of uniform standards with our
8 neighboring state. Thank you.

9 MS. POSTON: Thank you. Okay. Mr. Swartz
10 will be followed by Robyn Meenach, Meenach. And I
11 apologize if I misspelled that. Hi.

12 MR. SWARTZ: My name is William Swartz. I
13 live on Onion Creek, north of Colville. I'm a
14 geologist by training. I have a 35-year career
15 participating in various natural resource industries,
16 and over the past ten years I've been involved in
17 monitoring water quality and watershed functions in the
18 Colville National Forest.

19 My primary concern is with bacterial
20 contamination and -- with respect to fisheries,
21 primarily, and also primary contact water use. My
22 experience has been with 55 streams and reaches across
23 Northeast Washington. Of those, 16 are listed as
24 impaired under the current standards.

25 Ten of those 16 are compared by virtue of
0015 fecal coliform contamination. One of those -- only one
2 of those ten -- exceeds the current standard of a
3 geometric mean of 50 colonies per 100 millileters of
4 water. Most of those impairments are due to the 10
5 percent standard, where 10 percent of the samples that
6 went into that mean exceeded 100 colonies per
7 millileter, or per 100 millileters, excuse me.

8 I do not have information that would lead me
9 to -- to make a meaningful comparisons between fecal
10 coliform and *Escherichia coli*, but I am presuming a 1
11 to 1 ratio of those two standards.

12 The apparent relationship I see in the field
13 is that when there are occasional -- the occasional
14 excursions represented by that 10 percent limit, it is
15 an indicator of severe degradation of a catena of
16 riparian habitat integrity, bank and channel stability
17 and function, turbidity and nutrient loading.

18 The degradation of that catena strongly
19 detracts from values for fisheries, wildlife, contact
20 use, riparian domestic withdrawals and tribute to lake
21 symptoms. The avoidance and remediation of that
22 degradation are addressed easily by low cost, widely
23 available technologies.

24 The Federal government will probably, due to
25 its concentration on managing native fisheries, will

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1 adhere to a more stringent standard. I strongly feel
2 that targeting more stringent standards statewide would
3 be a great ease on future regulatory dislocations.
4 Thank you, and I thank the Department for doing an
5 overall excellent job on revision of the rules.

6 MS. POSTON: Thank you. Okay. And after
7 Ms. Meenach is --

8 MS. MEENACH: Meenach.
9 MS. POSTON: Meenach. I'm sorry. -- is
10 Mr. Mark Storey.
11 MS. MEENACH: My name is Robyn Meenach. My
12 husband and I farm just south of Spokane near Valley
13 Ford. I do not support the proposal for Water Quality
14 Standards from the State Department of Ecology for
15 several reasons. They put fish before people. The new
16 use-based approach is fish-centric.
17 The standards are designed to bring the water
18 bodies as close as possible to optimal conditions for
19 fish growth and survival, conditions that were derived
20 by standards in the laboratory not in nature.
21 Furthermore, these proposed rules contradict the
22 recommendations contained in the governor's
23 Competitiveness Council Report, which were to
24 streamline regulations not add more onus environmental
25 regulations.

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1 Secondly, not all the proposed regulations
2 have credible data to support changes in the standards.
3 For example, the use-based maximum temperature limits
4 are largely without scientific support. The Ecology
5 review of temperature cautioned on this problem
6 stating, and I quote, "Thus while serving as good
7 general guidelines, the spawning dates used in this
8 analysis should not be relied upon too heavily to set
9 statewide criteria for incubation," yet the standards
10 for both temperature and oxygen were set with fixed
11 dates.

12 Third, the used-based regulation used optimum
13 fish growth to set standards. Whereas, the class-based
14 regulations we have today set standards to prevent
15 impaired fish growth. This change in endpoints is new
16 and represents a significant departure for previous
17 regulatory approaches.

18 The standards are extrapolated from
19 laboratory studies. In the laboratory studies can hold
20 conditions constant in experimental tanks, but fish
21 live in a diverse environment. In extrapolating from
22 laboratory conditions to the natural environments,
23 Ecology purposefully excluded the consideration of
24 micro habitats. Therefore, the standards disregard
25 behavior in which fish seek favorable microhabitats

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1 during periods of sub optimal water quality.

2 These are blanket rules across the state.
3 One size fits all, east and west. Under the use-based
4 standards that you are proposing my Eastside streams
5 will violate the temperature standards in the summer.
6 Some by as much as 15 degrees centigrade. Whereas,
7 Westside streams will seldom be in violation.

8 Air temperature mostly controls the seasonal
9 patterns of temperature in streams and lakes.
10 Therefore, streams on the west side of the Cascades
11 have a smaller range of temperatures than occurs in the
12 east side streams. The seasons are fixed. Attempting

13 to regulate nature to comply with temperature and
14 oxygen standards between fixed dates of September 15th
15 to May 31st is not only inappropriate, it is ludicrous.

16 Clearly, the salmon have more sense than the
17 regulators since studies show that fish do not spawn
18 every year on September 15th, but when necessary, will
19 wait until the temperatures get lower. The oxygen
20 standard is overly restrictive and does not provide
21 meaningful improvement in fish protection.

22 The new criteria would result in more
23 frequent water quality violations during summer high
24 temperatures because warm water does not absorb as much
25 oxygen as cold water does. Most potential violations

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1 of oxygen standards could likely occur near September
2 15th when the oxygen standard increases to adjust to
3 fish spawning.

4 The temperature standards become more
5 restrictive under the new regulations requiring lower
6 temperatures, as much as four degrees more stringent
7 for char. The exclusion of thermal refuges ignores an
8 important way that fish avoid high temperatures, so
9 these standards are too conservative.

10 And finally, the antidegradation policy. If
11 a waterbody is not functioning as a laboratory defined
12 optimal condition, then human activity can be
13 restricted. Under the new regulations, "The water
14 quality necessary to protect existing and designated
15 uses of a water must be maintained and protected." But
16 don't forget that the fish use is primary and most
17 restrictive.

18 Furthermore, the new policy also states,
19 "Human actions are not allowed to further lower the
20 water quality, and the Department will take appropriate
21 and definitive steps to bring the water quality back to
22 levels which meet the Water Quality Standards."

23 I guess I would like to know what the
24 Department means by appropriate and definitive steps
25 and how much will they cost and who will pay for them?

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1 DOE has not yet completed the cost benefit analysis, so
2 the public is unable to comment on it in relation to
3 the proposed rules. Thank you very much.

4 MS. POSTON: Okay. Thank you. Okay. And
5 Mr. Storey will be followed by Mark Bordsen.

6 MR. STOREY: Hi. I'm Mark Storey. I'm the
7 Whitman County engineer in Colfax, Washington. Upon
8 researching the proposed change from a class-based
9 format to a use-based format for Water Quality
10 Standards, I thought it would be a definite step in the
11 right direction.

12 However, specific criteria for determining
13 the compliance with the proposed standards don't seem
14 to reflect current uses in our area, that's for WRIA
15 34, although, some of the changes seem to make sense
16 based on evolving science. For example, E. Coli versus
17 fecal coliform, others don't seem to reflect the

18 realities of the current uses or even of the historical
19 conditions of the streams prior to Anglo-European
20 settlement and land management.

21 The criteria that seems to need for scrutiny
22 is water temperature and dissolved oxygen. Current
23 measurements in our local streams suggest the criteria
24 for these variables are unattainable. Recent
25 discussions with some of the local Washington and Idaho

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1 Fish and Wildlife biologists suggest proposed criteria
2 probably would not be attainable even under natural
3 conditions.

4 They further indicate that the few salmonids
5 currently occupying the Palouse River watershed have
6 been introduced. To me this is fairly strong evidence
7 that the natural temperature and dissolved oxygen of
8 the Palouse Region waters could not meet the proposed
9 criteria. Does it really make sense to arbitrarily
10 assign a use rating of salmon spawning and rearing or
11 even salmon rearing only to any of the water within
12 WRIA 34?

13 A more scientific approach of specific water
14 sheds would be to perform some minimum level of
15 monitoring prior to arbitrarily assigning use based
16 criteria independent of the natural watershed
17 characteristics.

18 I have specific requests for the proposed
19 use-based criteria: Allow for future fine tuning of
20 beneficial uses in the water sheds, including more
21 realistic numerical criteria to match the existing
22 uses. It seems there are a fairly limited number of
23 use choices when considering the actual diversity of
24 current uses in our region.

25 Second, needs of aquatic species will not be

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1 met even under natural conditions. Numeric criteria
2 based on biological needs will not be attainable and
3 targets must, at a minimum, reflect natural background
4 of the watershed. I would further suggest additional
5 leeway for the agricultural and grazing uses.

6 Thirdly, and finally, monitor natural
7 conditions of at least a sampling of the local waters
8 to determine what realistic goals are for the
9 watershed. Thank you.

10 MS. POSTON: Thank you. I would love that.
11 Thank you. Okay. Mr. Bordsen will be followed by Glen
12 Cosby.

13 MR. BORDSEN: Good evening.

14 MS. POSTON: Hi.

15 MR. BORDSEN: My name is Mark Bordsen. I'm
16 the Planning Director in Whitman County in Colfax,
17 Wasington. In general, the change from the class-based
18 system to a use-based system seems to be positive, but
19 there are some concerns. The Water Quality Standards
20 currently assigned to Whitman County under the
21 class-based system are unattainable. While we think
22 that water quality standards from a use-based system

23 should be more realistic, it will do us no good if the
24 standards cannot be achieved. So we believe the
25 use-based system is better, but we cannot accept the

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1 standards that are being proposed.

2 This part of Washington State has a climate
3 that does not seem to be recognized by those who have
4 set and who propose standards. Hot August nights and
5 hotter days create havoc with the water temperatures,
6 and in many cases dry up the drainages completely.

7 The ultimate result of such standards might
8 envision vegetation and brush and trees up every draw
9 and along the banks of each creek and river. If this
10 is the goal, it is important to look at some
11 consequences.

12 First, is that vegetation alone will not cool
13 water temperature. Shade can keep water from getting
14 hotter. Common sense tells us that. But in our region
15 it will not make the water cooler than it is. Water
16 needs to flow or emanate from ground water sources to
17 start out and to remain cool in our area.

18 Second, is that these standards could
19 ultimately lead to the loss of agricultural use of
20 lands adjacent to drainages. If so, the landowners
21 must be compensated for the loss of these lands. Local
22 governments must also be compensated for the loss of
23 tax revenue historically generated from these lands.

24 Third, low flow in the summer would normally
25 cause many drainages to dry up or cease to flow, except

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1 those that are fed by legally, treated sewage plant
2 discharges. There is a dilemma here: Keep that poor
3 quality water in the creek or dry it up completely.

4 Fourth, it is highly unlikely that drainages
5 in Whitman County will ever be swimmable or wadable
6 because most of them are too shallow and mud lined,
7 also, in most cases few people will want their kids
8 wading in any of these drainages. Therefore, these
9 kind of uses should not be imposed upon these waters.

10 Fifth, standards should be based upon what is
11 practical and possible. Research should be undertaken
12 to acquire a small watershed and do all of the things
13 that scientists can naturally do to make the best.
14 Then take the water quality measurements for
15 temperature, dissolved oxygen and so forth and see what
16 you get. That would be a great way to set baseline
17 standards for future performance. Those might be then
18 standards that can possibly be met.

19 MS. POSTON: Okay. Thank you.

20 MR. BORDSEN: Thank you.

21 MS. POSTON: Okay. Mr. Cosby will be
22 followed by Larry Esvelt.

23 MR. COSBY: My name is Glen Cosby, and I'm a
24 philosophy instructor at the Spokane Community College.
25 I live in Spokane. I'd like to comment on the water

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1 quality antidegradation implementation plan,

2 specifically Tiers II and III.

3 I'm concerned under Tier II about the caveat
4 that degradation would be allowed if it could be
5 explained as to why it is in the overriding public
6 interest. It strikes me that this allows for a death
7 of this tier by a thousand loopholes and overrides.

8 Specifically, politically it's often
9 expedient to favor short-term economic benefit over
10 long-term ecological cost. So my recommendation would
11 be that, to the DOE, that the duration of alleged
12 benefit and the duration of the cost of the degradation
13 to the ecosystems would be included in the cost benefit
14 analysis as to whether or not public interest actually
15 does override ecological damage.

16 As to Tier III, it's unclear to me why there
17 aren't -- or isn't a list of outstanding -- potentially
18 outstanding -- resource waters compiled. Why we have
19 to start from scratch, so to speak? Again, one of the
20 criteria of the eligibility requirements states that
21 protection is not supposed to cause substantial
22 economic impact to local communities.

23 Again, I see potential here for this tier
24 dying a death by an impossible standard. It sets up a
25 scenario where we will have ecological protection only

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1 if, one, it doesn't cost too much; two, it doesn't
2 upset anybody; and three, the status quo was
3 maintained, which is tantamount to not allowing for
4 protection at all.

5 And I would echo some of the previous
6 comments about the Spokane River and the need for the
7 State of Washington to work with the State of Idaho to
8 protect our water quality because of runoff,
9 particularly from the Coeur d'Alene basin. Thank you.

10 MS. POSTON: Thank you. Okay. Randy
11 Baldree. Be carefull of the cords up here as you come
12 across, and Mr. Baldree will be followed by Jean
13 Wardwell.

14 MR. BALDREE: MY name is Randy Baldree. I'm
15 an agriculturalist. I'm here form Whitman County, and
16 my comments are as follows: Recent measurements in
17 surface water quality in Whitman County, designated at
18 WRIA 34 for the most part, have shown that during
19 certain times of the year prominent streams within the
20 county do violate the proposed standards of a use-based
21 system.

22 Violations of maximum water temperature and
23 minimum dissolved oxygen have, in fact, occurred and
24 will no doubt continue to occur during the month of
25 August when flows are exceedingly low and the ambient

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1 temperature is quite hot. As a point of information I
2 would note that in the proposed new language of the
3 Washington Administrative Code 173-201A, all surface
4 waters in the WRIA 34 have been given a use rating of
5 salmon spawning and rearing, with the exception of
6 Palouse River from the mouth -- from its mouth to

7 Colfax, which is rated as salmon rearing only.
8 I'm a little puzzled by the use of this
9 rating due to the natural barrier of Palouse Falls,
10 which prevents any movement of any fish, anadromous or
11 otherwise, up river from that point. At the very least
12 one would assume that the aquatic-life-use criteria and
13 WRIA 34 should be based on nonanadromous trout and
14 perhaps only on indigenous warm water species. Both of
15 these aquatic life designations have lower water
16 quality criteria than that of the current use-based
17 system that's been designated for the WRIA.

18 And finally, in terms of a question that I
19 had earlier -- and I'd like to have it recorded in --
20 is I'm very concerned with the potential impacts for
21 enforcement actions in the WRIA as it relates to rural
22 communities, towns, cities, businesses and farms in
23 terms of compliance with the standards that are being
24 proposed. Thank you.

25 MS. POSTON: Okay. Thank you very much.

0028

1 Okay. Ms. Wardwell will be followed by Rob Buchert.

2 MS. WARDWELL: I am Jean Wardwell from
3 Pullman, Washington, and I'm Chair of the Whitman
4 County Planning Commission. My concern is with
5 inherited waters, waters inherited from non-Washington
6 political enemies -- entities -- along our three
7 borders.

8 There are 11 counties on the borders with
9 Oregon. The Columbia River provides a barrier
10 protecting 7 of those 11 counties. There are 4
11 counties along the Idaho border. There is 6 counties
12 on the border with British Columbia. One is protected
13 by the Strait of Juan de Fuca.

14 There are 19 Counties along our state
15 borders. Eleven counties have no geological barrier to
16 protect them from inheriting part or all of their
17 waters from those entities. Whitman County is one of
18 those -- is one of those counties.

19 Let us consider Paradise Creek. It is 20
20 miles long. Paradise Creek is part of the South Fork
21 of the Palouse River watershed. It's starts from a
22 spring near the submit of Moscow Mountain. At that
23 point the water from the spring does not meet the Ph
24 standards of the Washington Department of Ecology.

25 The creek then meanders down Moscow Mountain

0029

1 past homes with septic tanks that do not have or meet
2 Washington Department of Ecology standards. It flows
3 through some farmland then through the City of Moscow,
4 Idaho. In Moscow it is subject to stormwater runoff.
5 Three to four hundred feet from where Paradise Creek
6 enters the State of Washington the Moscow Sewage
7 Treatment Plant dumps its wastewater into the creek.
8 This sewage treatment plant has been in violation of
9 EPA standards for at least a decade and probably
10 longer.

11 What use do you see for this creek? Wading,

12 swimming, fishing? This creek does not meet the
13 Department of Ecology standards at its origin and has a
14 rough flow until it enters our county and our
15 watershed, which is WRIA 34. This is just one small
16 creek in one of the 11 counties that inherits some or
17 all of the water from other political enemies --
18 entities. What provisions have you put in your
19 standards for dealing with these inherited waters?
20 Thank you.

21 MS. POSTON: Okay. Mr. Buchert will be
22 followed by Rod McIntosh.

23 MR. BUCHERT: Hello. Thank you. My name is
24 Rob Buchert. I'm the district manager of the Palouse
25 Conservation District located in Pullman, Washington,

0030

1 and I've been involved in watershed planning and water
2 quality issues for the past five years in the Palouse
3 Basin and WRIA 34.

4 And I guess first of all, upon viewing the
5 proposed rule I question the designation, the proposed
6 designation -- designated uses of salmon rearing and
7 spawning within the basin. I'd like to -- like to see
8 the science behind that one.

9 But being responsible for one of the many --
10 one the few maybe at this point -- responsible for
11 selling conservation to private land owners within the
12 basin, and the basin being primarily 90 plus percent
13 private land -- trying to sell conservation to those
14 land owners in the name of improved water quality,
15 it's -- it's difficult at best to -- to get them to
16 relate to the current Water Quality Standards that have
17 been set, not really believing that they can be met as
18 they stand.

19 Under the proposed -- the language in the
20 proposed rule, again, listing salmon rearing and
21 spawning as a basis for promoting improved water
22 quality, it creates somewhat of an apathetic, you know,
23 attitude as far as, well, how can we -- why should we
24 even bother trying to meet something that's
25 unattainable.

0031

1 So I would just like to -- I would hope that
2 somebody in Ecology would recognize that -- take
3 another look at perhaps at that designation and -- and
4 realize that there are a lot of farmers and ranchers
5 and other land owners that are actively working on
6 improving water quality. But to meet the standards as
7 both currently and as they're proposed is quite
8 possibly an impossibility, so that's about all I have.

9 MS. POSTON: Okay. Thank you. Okay.
10 Mr. McIntosh will be followed by, I believe -- oh boy
11 Thuy Ngugen. I apologize. I know I slaughtered that.

12 MR. MCINTOSH: I'm Rob McIntosh, a farmer in
13 Whitman County. I live at 3512 McIntosh Road, Pullman,
14 Washington. I have just a short statement. I'm here
15 in hopes that we can work together. I feel that
16 producers are being asked to meet standards that are

17 not reasonable or attainable. I have not seen proof
18 that the standards that we are being required to attain
19 have ever existed.

20 For these reasons I feel it is -- that our
21 time can be better spent making improvements in all
22 areas of the proper natural function instead of
23 striving for zero tolerance. As a citizen of Whitman
24 County, and a property owner, I look forward to working
25 with all groups to preserve our custom culture and

0032

1 economy and our property rights as stated in the
2 Constitution.

3 MS. POSTON: Thank you, sir. Okay. Thuy
4 Ngugen. Going once. Okay. The next person on the
5 list is Tri Le. No? Okay. Neil Beaver, and
6 Mr. Beaver will be followed by Dwight Opp.

7 MR. BEAVER: I'm Neil Beaver, the Water Watch
8 Coordinator for the Land Council. The Land Council has
9 a membership of about 1,000 people; the majority of
10 which live in Washington state. We'll provide a more
11 detailed -- we'll provide more detailed written
12 comments. In sort, we'll not support -- sorry.

13 MS. POSTON: That's okay.

14 MR. BEAVER: In sort, we'll not support any
15 change in Water Quality Standards that do not protect
16 recreation, human health or fish. We request that DOE
17 consider creating subsistence lifestyle standards and
18 also transboundary contamination standards. Thank you.

19 MS. POSTON: Thank you. Okay. Dwight Opp,
20 and Mr. Opp will be followed by Hal Rowe.

21 MR. OPP: My name is Dwight Opp, and I'm
22 employed with Stimpson Lumber Company in Newport,
23 Washington. I'm responsible for managing its inland
24 region private timber lands, which include some 115,000
25 acres in Northeast Washington. I thank you for the

0033

1 opportunity to comment on these proposed Water Quality
2 Standards.

3 I'd like to voice my general support for the
4 proposals and more particularly for a key concept I see
5 throughout to the proposal, which is clean, cool water.
6 Your proposed temperature criteria for char, salmon,
7 steelhead and trout spawning deserves strong support.

8 They're based on methods that are
9 scientifically based, objectively arrived at and give
10 full protection for native salmonids and translate into
11 high survival rates for fish. Use of single year round
12 spawning and rearing criterion for fish in their use
13 categories is strongly science supported and consistent
14 with natural habitats of fish species.

15 Specific to the forested arena, I commend
16 your acknowledgment of the work that has come out of
17 the Forest and Fish report. The Forest and Fish report
18 clearly anticipated the need for these changes to water
19 quality standards and addressed the goals after
20 antidegradation in the Federal Clean Water Act.

21 Your support of that immense collaborative

22 and public antidegradation effort from the Forest and
23 Fish report, it added protection to eight million acres
24 of forest land and 60,000 miles of streams, simply
25 makes good sense. Reduction of the duplicative

0034

1 government review is an example of good government in
2 action and deserves recognition.

3 Last, I would like to comment on the process.
4 This has been a deliberate and open public process and
5 expansive record demonstrating use of the best
6 available science and data, as well as numerous public
7 comment periods and workshop opportunities. I urge you
8 to move forward with those proposed standards in the
9 direction of cool, clean water. The standards are
10 attainable, measurable, protective, can be implemented
11 and fairly applied. Thank you, again, for the
12 opportunity to comment.

13 MS. POSTON: Thank you. Mr. Rowe followed by
14 Karen Linholdt. It was hurriedly written, I think.

15 MS. LINHOLDT: It's Linholdt.

16 MS. POSTON thank you.

17 MR. ROWE: Hi. My name a Hal Rowe. I'm
18 Conservation Director of the Kettle Range Conservation
19 Group. We have 800 members located throughout the
20 State of Washington, mainly in Ferry and Stevens
21 Counties, Spokane County, and on the west side of the
22 state we have offices in Republic the Methow Valley and
23 in Spokane.

24 We oppose any changes to the Water Quality
25 Standards that decrease protection of water quality.

0035

1 We feel that recreation and salmon migration would be
2 negatively affected by the proposed rule changes. We
3 are concerned that under the proposed changes loopholes
4 would be created by which polluters will continue to
5 find exemptions to pollute.

6 We do support maintaining and improving
7 existing Water Quality Standards. We feel that the
8 present classification offers protection against the
9 exemptions. We will be submitting formal, written
10 comments before the March 7th deadline is -- we'll have
11 more detail then.

12 MS. POSTON: That's great.

13 MR. ROWE: Thank you for the opportunity to
14 comment.

15 MS. POSTON: Okay. Thank you.

16 MR. ROWE: You bet.

17 MS. POSTON: Okay. Karen Linholdt, and Karen
18 will then be followed by Mike Peterson.

19 MS. LINHOLDT: Thank you. My name is Karen
20 Linholdt. I'm a citizen of Spokane. I'm also a public
21 interest lawyer in Spokane. I'm also a mother of two
22 children, and we do recreate in the various streams and
23 rivers in the State of Washington and, therefore, I
24 have various concerns about these proposed regulations.

25 I will limit my comment to the

0036

1 antidegradation Tier II. Specifically, these
2 antidegradation protections must apply to all pollution
3 sources, including nonpoint pollution sources, which do
4 include the agricultural pollution. Agricultural
5 pollution is the last and largest unregulated source of
6 pollution in our state, and we must find a way to
7 address these problems, and blanket exemptions will not
8 do the job. Thank you.

9 MS. POSTON: Thank you. Hi.

10 MR. PETERSON: My name is Mike Peterson. I'm
11 the Executive Director of the Lands Council. And as
12 Neil pointed out we will be providing written comments.

13 As one of the many interested stakeholders in
14 the future of water in our state, we have to ask this
15 basic question: Do polluters benefit by the new
16 proposed rules? Because we know that polluters will
17 operate at the lowest water quality they are allowed,
18 and the new regulations appear to provide new tools for
19 polluters to lower our shared water quality.

20 Basing the standards on natural conditions
21 may sound reasonable but how are those defined? If
22 conditions were natural, we would have healthy
23 fisheries, swimming holes safe for our kids and
24 floodplains free of contaminants? We don't have that.

25 The loss of vegetative cover, changes in late
0037

1 season flow, changes in riparian function have all
2 made determining natural conditions very difficult. A
3 better system is to use strict standards based on
4 conditions needed to support native fisheries and
5 native aquatic organisms and protect human health.

6 The use-based criteria appears to be a
7 politically charged concept that would move Water
8 Quality Standards from scientific scrutiny to one
9 dictated by those who hold power at the moment. Making
10 it difficult, for example, to reintroduce native
11 species to areas where they have been extirpated.

12 The standards do not appear to address many
13 issues of concern to the Lands Council. In particular,
14 what about sediment and turbidity levels, land
15 management roads, et cetera, are killing our
16 fisheries. Clearly, the current standards need
17 reworking, but nothing is mentioned here about sediment
18 loading. Thank you very much.

19 MS. POSTON: Okay. Thank you. Okay.
20 Mr. Peterson was the last person who indicated they
21 wanted to provide testimony. So at this time I'm
22 asking if there's anyone else? Okay. Sir, if you
23 could please come forward and state your name for the
24 record and give me just a moment to find you on my list
25 here.

0038

1 MR. POWERS: My name is Julian Powers --

2 MS. POSTON: Okay.

3 MR. POWERS: -- Spokane resident and
4 environmentalist. I have not seen either global
5 warming or climatic change mentioned in any of the

6 documentation that I have seen. I consider this a
7 significant deficiency because it is important to plan
8 for the future.

9 The intergovernmental Panel on Climatic
10 Change says that climate change is due, at least in
11 part, to human activities and every prediction has been
12 too conservative. In other words, things are
13 progressing faster than had been predicted.

14 The impacts relative to the issue today is
15 that Washington water will suffer as we have higher
16 temperatures, more precipitation, usually in terms of
17 heavy downpours, more storms and more droughts. The
18 effects: The snow plaque will be smaller, which means
19 that in our hotter and dryer summers we will have less
20 water. At the same time there will be a need for more
21 water because of the reduced summer precipitation and
22 hotter temperatures.

23 The precautionary principle, which is
24 internationally recognized, would say that we need to
25 be conservative in what we are planning, because we

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1 need to look at what can happen. Now, let me tell you
2 a little bit of what may happen. We are going to have,
3 in East and West Washington both, reduced quantities of
4 summer runoff. We are therefore going to have reduced
5 quality of our water, because as we know the old
6 argument about the solution to pollution is dilution.
7 And with low water you don't have the dilution.

8 Therefore, in a small number of years the
9 predictions are there will be large negative impacts on
10 activities that depend upon water. I will be
11 submitting written comments in more detail. Thank you.

12 MS. POSTON: Thank you so much. Okay. Is
13 there anyone else who would like to provide testimony?
14 Okay. Ma'am. And then you can come up afterwards.

15 UNIDENTIFIED AUDIENCE: Great.

16 MS. POSTON: Okay. And you are?

17 MS. CASTLEBURG: Robbi Castleburg.

18 MS. POSTON: Okay.

19 MS. CASTLEBURG: My name a Robbi Castleburg,
20 and I'm a member of Spokane Canoe and Kiyak Club, of
21 which there are about 400 members. Some of the things
22 that we would like to suggest are that the Department
23 consider returning the term "recreational use" to the
24 designated uses, also, to retain the lengths between
25 water quality and water quantity.

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1 As boaters we're deeply concerned about water
2 quality, and without water quantity it's pretty hard to
3 float a canoe, kiyak or sea kiyak. We also have a
4 concern about the fact that there seems to be no
5 definition for the term "overriding public interest".
6 This is a deep concern of ours, because it seems to
7 then present itself as a loophole for possible
8 degradation of Washington State waters. Thank you for
9 this opportunity.

10 MS. POSTON: Thank you. Hi.

11 MR. CLARK: My name is Steve Clark.
12 MS. POSTON: Okay.
13 MR. CLARK: My name is Steve Clark, and I'm a
14 student at Spokane Community College, and I'm concerned
15 about Tier III. And I would like to state that I think
16 that there should be a definite list put together of
17 headwater water sheds that meet this qualification
18 before this goes across so that environmental movements
19 do not have to fight to preserve headwaters that
20 clearly meet all of these guidelines already.

21 There is many, many comments that I'd like to
22 make, and I will make a written statement. But I would
23 appreciate a response to Tier III. Thank you.

24 MS. POSTON: Okay. Thank you. Okay. Is
25 there anyone else who would like to provide comments

0041

1 tonight? No? Okay. All the testimony that was
2 presented at this hearing, and the other seven
3 hearings, as well as any written comments that are
4 received are part of the official record for this
5 purpose and will receive equal weight in the decision
6 making process.

7 The public comment period ends March 7, 2003
8 at 5 p.m. Submit written comments to -- and here is
9 your address: Susan Braley, B-r-a-l-e-y, Department of
10 Ecology, Post Office Box 47400, Olympia, Washington
11 98504-7600. Written comments must be post marked by
12 March 7, 2003. You may submit comments by e-mail, and
13 Susan's e-mail address -- and this is not case
14 sensitive -- is swqs@ecy.wa.gov. Comments may also be
15 received via fax, and the fax number is (460) 407-6426.

16 All oral and written comments received during
17 the public comment period will be responded to in a
18 document that's called a Response to Comment Summary,
19 that will state Ecology's official position on the
20 issues and concerns that have been raised during this
21 public comment period. This document should be
22 available around June 23, 2003. It will automatically
23 be mailed out to everybody who provided oral or written
24 testimony and provided us with return address
25 information.

0042

1 As stated earlier, Ecology is anticipating
2 the adoption of these regulations to occur no later
3 than July 1st of 2003. On behalf of the Department of
4 Ecology, thank you for coming to the workshop and our
5 public hearing. We appreciate your time, comments, and
6 this hearing is adjourned at 9:05 p.m. Thank you.

7 (Thereupon, the public hearing was adjourned.)

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REPORTER'S CERTIFICATE

1 I, DAVID E. HIX, Certified Shorthand
2 Reporter, do hereby certify:
3 That the foregoing proceedings were taken
4 before me at the time and place therein set forth, at
5 which time any witnesses were placed under oath;
6 That the testimony and all objections made
7 were recorded stenographically by me and were
8 thereafter transcribed by me or under my direction;
9 That the foregoing is a true and correct
10 record of testimony given, to the best of my ability;
11 That I am not a relative or employee of any
12 attorney or of any of the parties, nor am I financially
13 interested in the action.
14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 3rd day of February, 2003.
16
17
18

19 DAVID E. HIX, C.S.R. #1992
20 816 Sherman Avenue
21 Suite 7
22 Coeur d'Alene, ID 83814
23
24
25

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WASHINGTON STATE DEPARTMENT OF ECOLOGY
PUBLIC COMMENT SESSION
PROPOSED CHANGES TO
WATER QUALITY STANDARDS

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11 DATE TAKEN: February 6, 2003
TIME: 8:07 p.m.
12 PLACE: Water Resource Center
4600 S.E. Columbia Way
13 Vancouver, Washington
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COURT REPORTER: Sarah C. Thomas, RMR, CSR

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P R O C E E D I N G S

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MS. POSTON: Let the record show it is 8:07 p.m. on
February 6, 2003, and this hearing is being held at the Water
Resources Center located at 4600 S.E. Columbia Way, Vancouver,
Washington.

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The primary purpose of this hearing is to receive
public comments regarding proposed changes to Chapter
173-201A, Water Quality Standards for Surface Waters of the
State of Washington and comments on the draft Environmental
Impact Statement.

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The legal notice of this hearing was published in
the Washington State Register on January 3rd, 2003, Issue
Number 03-01-124. In addition, the display ads announcing the
hearing were published in the following papers: January 15th,
2003, The Olympian; January 23rd, 2003, The Wenatchee World,
Spokesman Review, Tri-City Herald, and Yakima Herald; on
January 30th, 2003, Bellingham Herald, Seattle Times/Post
Intelligencer, Peninsula Daily News, Aberdeen World, The
Vancouver Columbian, and the Longview Daily News.

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The Department of Ecology also directly mailed out
approximately 3320 announcements, 550 e-mail announcements,
and 621 CDs to potential interested citizens, regulated
businesses, governmental officials, and every city, county,

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and tribe in the State of Washington.

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The Department of Ecology is expecting to adopt the

3 proposed changes, as well as the draft Environmental Impact
4 Statement, no later than July 1st of 2003. Federal
5 regulations require that State water quality standards be
6 reviewed and approved by the United States Environmental
7 Protection Agency for compliance with the Clean Water Act
8 prior to their use. The Environmental Protection Agency has
9 60 days to approve or 90 days to disapprove the State adopted
10 standards.

11 If the State water quality standards are disapproved
12 by the Environmental Protection Agency because of
13 noncompliance with either the Clean Water Act or the
14 Endangered Species Act, the Environmental Protection Agency
15 must promulgate new standards on behalf of the State or seek
16 alternative measures. The new water quality standards will
17 not take effect for approval of activities covered under the
18 Federal Clean Water Act until this process is complete.

19 Okay. At this time we will begin taking testimony.
20 And the first person who signed up -- I don't have a name; I
21 have an association -- Washington Rural Civil Rights League,
22 could you please come up, and state your name and address for
23 the record so that we can make sure you get a copy of the
24 comments response.

25 STEVE FRANK: My name is Steve Frank. I am with the
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1 Washington Rural Civil Rights League, 1694 Ferrier Road,
2 F-E-R-R-I-E-R, Road in Winlock, 98596.

3 And I will forego the opening statements since it's
4 been submitted for the record. I am going to thank you for
5 allowing me to testify. This whole thing has also been
6 submitted to the record, so I am just going to hit some
7 highlights.

8 Have the old standards been met? I suggest not.
9 Ken Johnson of the Weyerhaeuser Company argued that Ecology
10 should have focused on implementation, but, instead, they
11 focused attention on writing the new rule. And since
12 compliance was never attained with the old rule, what facts do
13 you have to support a major rewrite is in order?

14 DOE didn't follow the adaptive management systems,
15 where the agency learns from their successes and failures,
16 continually improving, gradually modifying the old rule, and
17 then determining it's insufficient. And I will quote, again,
18 Ken Johnson, "Moreover, there is no evidence that there will
19 be an actual improvement in water quality standards." I would
20 like to suggest that the statement's never been refuted.

21 I will refer you to RCW-77.85.210(8).

22 Is the new rule based on up-to-date scientific
23 criterion? No, I don't believe it is. Water temperature data
24 is not scientifically valid and stakeholder statements back it
25 up.

0005

1 Ed Conner, Seattle City Life, described certain
2 misconceptions and unexpected findings regarding the diverse
3 bull trout populations based on field experience in the Skagit
4 River. He emphasized the lack of knowledge about temperatures
5 needed for bull trout and he described his efforts to collect
6 additional data.

7 Dwayne Knightsel (ph), Butell Northwest -- that's

8 one of your most prestigious research institutions in the
9 nation -- observed the document did not observe the scientific
10 methods of hypothesis testing. John Palmer said people should
11 be careful about applying national temperature guidance too
12 strictly since that guidance is based on outdated information.

13 Let's go down to SEPA production. Decisions
14 pertaining to watershed restoration projects as defined in
15 RCW-89.08.460 are not subject to the requirements of a major
16 portion of SEPA. RCW-43.21C.030(2), we lose the following:
17 Alternatives to the proposed action. They don't have to come
18 up with an alternative. They can mandate such things as wider
19 buffer zones. Relationship between local and short-term use
20 of man's environment and the maintenance and enhancement of
21 long-term productivity.

22 In other words, you are overlooking all sorts of
23 economic impact to private property owners. That can be
24 considered a taking. Irreversible and irretrievable
25 commitments to national resources, timber or anything else

0006

1 that may be on there.

2 That's a partial list. You can refer to the actual
3 RCW for the full list.

4 Whether your computer modeling that Mr. Hicks
5 mentioned is called a decision support system or DSS,
6 according to a draft phase three SOW -- I'm not sure what
7 that's an acronym for -- and Decision Support System
8 information meeting on November 14th, 2001, held in Washington
9 State it says the DSS is a gaming tool. It allows the user to
10 try out what-if scenarios to meet objectives of the March 2000
11 SOW and to test the result of different alternatives.

12 But does it really -- does it really answer
13 questions? Not in the following case. The question was
14 asked, what if we were trying, for example, to achieve certain
15 water temperature? Will the DSS tell you all the factors and
16 management options available to get to the temperature? The
17 answer is no. The DSS is not an optimization tool.

18 This is more of a trial and error approach. It's
19 going to be a very expensive trial and error for landowners
20 since buffer zones, which they seem to be focusing on, is a
21 long-term haul.

22 What happens when it's a failure? What happens to
23 the guy that loses his farm because you have to cool his
24 irrigation and mandate a buffer?

25 Were most of Washington State residents fairly

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1 represented during rule formulations? No. Ninety-two people
2 were invited. Fifty-nine of them were government bureaucrats.
3 Large cities like Everett, Seattle, Federal Way, and Tacoma
4 were represented, while only one representative from a small
5 city was present. That would be Chehalis, incidentally.
6 Grays Harbor and Pierce County sent one man each. That was it
7 for smaller counties.

8 Associations, lawyers, consultant, big business, and
9 environmentalists were all there. The place was devoid of
10 small business owners, small timber owners, private property
11 owners, individual farmers. And no senior citizens who own
12 private property were present.

13 Now, come to the point. Is Ecology pushing a
14 certain agenda? I believe it is for the following reasons:
15 The inclusion of aesthetics in a new rule which may stop the
16 following -- apparently it was present in the old rule, too.
17 It may stop logging operations that may be seen from a water
18 body; commercial shellfish beds and barges; remodeling of
19 houses that are deemed not aesthetically pleasing;
20 agricultural operations like construction of stock fences,
21 corrals or watering facilities; housing developments that
22 don't meet smart growth criteria.

23 I'll back that up with the discussion group
24 proceedings of the National Watershed Forum June 27th, 2001,
25 held in Arlington, Virginia, where the DOE took part. One of
0008

1 their agenda items, it says, "Continuing to build a national
2 constituent around watershed approach needs to include the
3 following: Watershed groups, land use trusts, non-industrial
4 forest landowners, smart growth groups, national environmental
5 organizations, and others."

6 This is what this group came up with. Now, left out
7 of the conference were farmers, ranchers, timber and logging
8 interests, small businesses, private property groups; in
9 essence, the people that will feel the impact of these rules
10 the most.

11 It's funny. These were the same groups that were
12 forgotten at the stakeholders meetings.

13 A government agency trying to push an agenda, I
14 think, is egregious. I believe it's illegal. It certainly is
15 immoral since government and its agencies are supposed to
16 represent everybody; not just like-minded interest groups.

17 Is DOE hiding something? I believe they are,
18 because I'm going to reference an Organizational Learning and
19 Adaptive Management for Salmon Conservation meeting held in
20 Bellevue, Washington on December 3rd. In attendance was
21 Mr. Dick Wallace, assistant to the director of Washington
22 State Department of Ecology.

23 The following statements are attributed to John M.
24 Calhoun, director of the National Resource Center, University
25 of Washington, and Robert G. Lee, professor of the College of
0009

1 Forest Resources, University of Washington. These are the
2 scientific fellows. And over \$3 billion has been spent on
3 fish and wildlife recovery efforts over the last 20 years.
4 That's billion with a B.

5 Yet according to Cassidy, who is a researcher,
6 "Long-term goals, observations, and strategies for salmon
7 conservation have not yet been adopted by the National Power
8 Planning Council." It goes on to say, "If this conference
9 maps the state of the art organizational learning and adaptive
10 management in the Pacific Northwest, we are compelled to
11 conclude that organizations are not prepared to learn, make
12 intelligent decisions about salmon conservation."

13 The following came from Dr. Robert P Lackey,
14 National Health and Environmental Effects Research Laboratory,
15 Officer of Research and Development, U.S. Environmental
16 Protection Agency out of Corvallis, Oregon. He says there are
17 logarithms for developing management objectives. There are no

18 magic formulas for optimization. No way to coerce democratic
19 societies and institutions to follow a rational decision-
20 making project.

21 In fact, it is near impossible to measure things
22 that are really important to people. For example, how do you
23 measure the trade-off between using water to grow potatoes
24 versus the same water to grow salmon? How important to
25 fishermen are wild salmon versus salmon started live in

0010

1 hatcheries? How important is preserving the icon status of
2 the wild salmon versus preserving private property rights?

3 Billions of dollars have been spent so far in failed
4 attempts to preserve the long-term slide of the wild salmon.
5 Even more sobering, it's not exclusively a money issue. If it
6 was, we could simply spend our way out of decline by either
7 buying off political losers or buying the things necessary for
8 restoration.

9 That means there is political losers in this, folks.
10 We are the guys that live out in the country. You know, we
11 try and we are met with more and more restrictive criteria all
12 the time. You wonder why we get nasty.

13 My concluding remarks, substantive evidence points
14 to billions of tax dollars spent for naught and a few salmon
15 were saved. This is documented in what I've said previously.
16 The result in loss of civil rights and property is stagnating
17 economy, loss of rural culture, and a very real fear and
18 loathing for the Washington State Department of Ecology.

19 Now you have decided to save bull trout using the
20 same failed methods with more stringent parameters. This is
21 taking money under false pretenses. It's a crime. It's
22 called fraud.

23 That's it. You guys have my packets.

24 MS. POSTON: Thank you.

25 I apologize if I -- Mr. Dennis Hadallov.

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1 DENNIS HADALLOV: I defer my time to Pat Hamilton,
2 Commissioner from Pacific County.

3 MS. POSTON: That's fine, sir.

4 Mr. Wade Boyd.

5 WADE BOYD: My name is Wade Boyd. I am with
6 Longview Fiber Company. I represent the timber lands
7 department of the company and I have written testimony which I
8 will leave with you.

9 But Longview Fiber Company is appreciative of the
10 liberty of the open public process the Department of Ecology
11 has used to establish the proposed new rules. The company
12 supports the use of scientifically derived and publicly
13 available data, which demonstrates existence of viable
14 populations that make significant contribution to the
15 biological community in the assignment of use-based standards.

16 The Department's proposed temperature criteria
17 afford full protection for char salmon, steelhead trout,
18 spawning and rearing. We believe that the proposed
19 temperature criteria are scientifically based, objectively
20 derived, and protective of the assigned uses.

21 Forest and Fish report-based forest practices are
22 now in place and they anticipated the water quality standards

23 and already address the goals of antidegradation as described
24 in the Clean Water Act. Current forest practices rules should
25 not, therefore, be subjected to additional review for Tier II
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1 under the antidegradation implementation plan.

2 The DOE is to be congratulated for the good work
3 that's been done in developing new water quality standards
4 applicable to the streams and the forest lands of Washington
5 State.

6 MS. POSTON: Thank you, sir.

7 Stu McKenzie.

8 STU MCKENZIE: I am Stu McKenzie, 11090 S.E. 240th
9 Place, Gresham, Oregon, 97080. I am speaking on behalf of
10 citizens of Oregon and Washington.

11 My objective for speaking is to aid Ecology to come
12 up with the best set of criteria for protection of water.
13 Basically we are counting on them having good standards. If
14 they don't have standards, obviously, our habitat will get
15 worse. That is not something that's desirable, I believe, for
16 our grandchildren.

17 Several comments. I believe most of my comments can
18 probably not be included in the standards, but probably should
19 be provided as guidance. I would like to see standards brief,
20 clear, distinct, and then the details of how to enforce or
21 measure the standards would come through a guidance document.

22 The first one has to do with historical data, as to
23 whether temperature and dissolved oxygen data would be valid
24 or not that has been collected historically, because it may
25 not be frequent enough to provide a seven-day average or a
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1 90-day average. I think that needs to be covered in the
2 guidance, how to deal with that.

3 Relative to a single measurement, dissolved oxygen
4 does have an alternative standard. I did not see one for
5 temperature. I think it would be good to consider having one
6 for temperature. If not, then maybe something else needs to
7 be done.

8 I think we need to provide some guidance on how we
9 will deal with the 303d list relative to the new standards
10 versus the old standards. Are some of the 303d lists going to
11 be dropped because they now no longer meet the new standard?

12 I think we need to have clarification on how the
13 seven-day average and the 90-day average works. For example,
14 if you have seven consecutive days in which you have a maximum
15 water temperature is it then three days preceding, three days
16 after, and the day of, so it would be like the fourth day of a
17 seven-day period, that's what it's going to be representative
18 of? Likewise with the 90 days for dissolved oxygen.

19 I am concerned about the minimal frequency that data
20 would have to be collected. As -- just as an example, if we
21 collected one value a day for temperature and we averaged
22 those, is that considered a maximum? If we collect two a day,
23 one larger than the other, say at 6:00 o'clock in the morning
24 and 6:00 o'clock in the evening, the higher of the two would
25 be the maximum. Does that represent what Ecology wants as a
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1 maximum?

2 I would suggest that they might want to consider a
3 minimum of every two hours for frequency if they truly want to
4 get some estimate of what the maximum is. I know that has
5 been used on the Columbia, where the variability is not large
6 within a 24-hour period. For a small stream that is open to
7 sunlight you may need to have 30-minute spacing.

8 I think we need some guidance on what we do when we
9 have a stream that is known to not be mixed. Let me lay the
10 example of if we have a river in which there is an island in
11 the center. On one channel there is coverage with shade, so
12 that over a half mile reach there is no significant or
13 measurable amount of temperature increase. On the other
14 channel, which is of an equal volume, there is no shading, and
15 it is shallow, and it's a fairly wide stream, but of equal
16 flow, and we have measured as much as a two-degree increase.
17 What is measurable? What is representative, then, of that
18 river? What do we report to Ecology in that situation?

19 Relative to E-coli now, the bacteria standard,
20 historically there has been a clause that not more than ten
21 percent of the data would exceed a second value. I have not
22 read the document that's being proposed now, so I don't know
23 if that is included. The way EPA is currently interpreting
24 that with guidance from EPA is to say that until you have 20
25 samples the highest value is, therefore, less than ten

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1 percent.

2 Technically that is correct. What I'm suggesting,
3 rather than saying no more than ten percent may exceed, that
4 you use the 10th percentile. That, then, is a fit of the
5 distribution of the data and it would be a more even -- a more
6 representative and consistent value to use rather than not to
7 exceed ten percent of the time.

8 Unfortunately, there are different equations for
9 calculating the 10th percentile. The one in Excel is not
10 generally accepted by the scientific community. I'm afraid
11 that most laypersons and perhaps many technical people would
12 rely upon Excel as the correct equation. The correct
13 equation, I believe, comes from a publication called
14 Statistics for Methods in Water Resources and the authors are
15 Helsel, H-E-L-S-E-L, and Hirsch, H-I-R-S-C-H. Dennis and
16 Robert, in case you need the first names.

17 Under agricultural water use, I would recommend that
18 either in the bacteria standard or in the agricultural water
19 standard that you give some indication that a secondary
20 bacteria standard is recommended for such water. I am
21 concerned about people who are using siphon tubes or working
22 with water cleaning sprinkler or spray hoses getting sprayed
23 with water.

24 While that's probably incidental, it still is
25 significant. I think there should be some protection for the

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1 farmers in that case or the people that are working with
2 water.

3 Relative to the change from classes to specific
4 uses, my sense is that when the Clean Water Act was passed and
5 responsibility was given to states to establish different
6 classes for different streams, there was a time line in which

7 this had to be done by and it was done fairly quickly. Now we
8 have an opportunity, I think, to be a little bit more exact as
9 to the uses.

10 Of course, this is the whole objective that, I
11 think, Ecology is trying to accomplish. I would suggest that
12 Ecology set up a time line to look at identified uses, get
13 lots of public involvement, and go from regional area to
14 regional area, and make an effort to try to get the uses
15 identified as the public perceives them.

16 That's the end of my statement.

17 MS. POSTON: Okay. Thank you.

18 STU MCKENZIE: Thank you for giving me the
19 opportunity to speak.

20 MS. POSTON: Thank you.

21 Okay. The next person is Tom -- is it McConnelly?
22 I apologize if I'm mispronouncing this. No?

23 A VOICE: I believe he is a gone.

24 MS. POSTON: Bryan Harrison.

25 BRYAN HARRISON: I am Bryan Harrison -- that's

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1 B-R-Y-O-N -- P.O. Box 68, South Bend, Washington, 98586.

2 I have a number of questions and concerns regarding
3 these proposed guidelines that I would like to get on the
4 record and -- and, hopefully, will get responded to. Many of
5 these comments are based upon direct current experience with
6 the TMDL process in the Willapa River.

7 My first concern in looking at these proposed
8 standards is that they are likely out of sync in process with
9 the national TMDL review process that Congress ordered in
10 2001, in association with EPA's funding for that year that
11 held implementation of some new guidelines until the National
12 Academy of Science finished some review.

13 And I guess I would ask that before any state, in
14 particular this one, would go forward with new -- a new act
15 and new standards that the outcome of that analysis of the
16 scientific bases of the whole TMDL process, since it is
17 nationally driven -- it comes from the Clean Water Act
18 federally down to the states -- that that be completed so that
19 we don't end up having to change direction or gears following
20 their analysis. I don't think that study is too far off from
21 completion.

22 Next, I would ask that the State itself address some
23 of the unresolved questions with its current program that are
24 both technical and administrative. Administratively we have
25 nearly 700 TMDLs identified that need to be done throughout

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1 the State. Very few -- I've heard quoted a dozen, maybe a
2 couple dozen -- have been completed to date. And we are very
3 far behind in the 15-year implementation schedule for doing
4 those.

5 And given that my belief would be with these new
6 standards we would have more stream reaches, more TMDLs that
7 are required, if at this point we have hundreds that need to
8 be done and only a few that we've been able to do, and yet we
9 are in a budget crisis, if we add hundreds more, potentially,
10 and the complexity of those increases, how on earth can we
11 actually believe that we can accomplish what we're setting

12 forth here and creating more?

13 And given the experience of the economy in Pacific
14 County in relation to the Lower Willapa River, actually
15 increasing the list of areas that are on the TMDL list and
16 require a water cleanup plan puts a chilling effect upon
17 business. We have had the major employer in the County state
18 after the 303d list came out -- this was Weyerhaeuser -- no
19 more money in Raymond until the TMDL list is completed and we
20 have some clear direction and certainty.

21 If we add yet more communities, more stream ranges
22 to the TMDL list, and continue on the path that we have, not
23 accomplishing very many of them, we'll have yet a further
24 chilling effect upon economic development in this state.
25 We're already in a recession.

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1 Technically there have been extreme difficulties and
2 challenges with the models that Ecology is relying upon. In
3 our particular instance the model that was produced for
4 dissolved oxygen for the Lower Willapa River mis -- was
5 developed solely by Ecology and it miscalculated the current
6 waste load, the dispersion within the river, the wave action
7 and tide influence in the river, the geometry of the river,
8 and, therefore, how much water was moving in any particular
9 tide up and down and after a rainfall, and completely, as a
10 result, miscalculated the impact of the existing pollutants.
11 And in the first draft the TMDL estimated that we exceeded our
12 river's capacity with the existing outfalls and, therefore,
13 reductions were needed.

14 One of the initial proposals proposed by Ecology was
15 to take our major employer of South Bend and zero out its
16 discharge. It is a major shellfish producer in the largest
17 shellfish plant in the state. And to reduce it to zero
18 discharge would reduce it to zero plant.

19 As a result, the County and our communities asked
20 for scientific investigation of the model and determined that
21 there were serious flaws in the development of the model and
22 assumptions placed into them. As such, worked with the
23 legislature to get a direct allocation so the community itself
24 would take over, complete the TMDLs. We did that with EPA and
25 with Ecology.

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1 We think now much has been done to improve that
2 model. And I think we all feel good about that model now.

3 However, the conclusion we have now is such that not
4 only might we not have exceeded the capacity of the river; we
5 may have excess capacity left. If we had simply accepted the
6 Ecology model -- and this is one of the most current ones
7 produced -- we would be rebuilding sewer treatment plants,
8 potentially relocating the seafood industries that are the
9 backbone of our community at the expense of multi million
10 dollars for these communities.

11 So given that there are technological challenges
12 currently with the models that Ecology is using, is this
13 really the time to increase the water quality standards or is
14 it the time to actually analyze the models that we have? I
15 think it raises the question as to whether the models are
16 precise enough to actually adequately predict the impact of

17 pollutants in our rivers within the very tiny allowance of
18 point three degrees centigrade or point two parts per million
19 of dissolved oxygen. Very likely that these models are
20 inaccurate enough that they cannot do that.

21 Lastly, I think the potential impacts which appear
22 minor, an increase of a degree centigrade there, on the
23 surface don't appear significant. But when you apply them to
24 the actual river it widely or potentially could widely
25 increase the areas subject to TMDLs and then severely impact

0021 1 restrictions within those expanded areas.

2 The Willapa River has a standard of six parts per
3 million. There is nothing man can do to get a certain section
4 of that river above. It's nationally published. We have all
5 agreed upon that. But there's areas near it that are above
6 six. They might not to be eight.

7 Where the new standard would go to right now in
8 those areas that are above six we can -- as long as we're not
9 creating any real major impact, we are allowed to expand our
10 businesses, recruit new businesses to come into the community,
11 and locate along the river a discharge or sewer treatment
12 plant. But with the higher standard we would not be able to
13 do that unless there is an analysis of whether that impact
14 might in the cumulative, along with all the other impacts, add
15 up to more than a point two parts per million dissolved oxygen
16 impact.

17 I'm not sure a business which is very marginal to
18 invest in our community and get return, anyway, would go
19 through the year's worth of analysis in order to determine
20 whether they, along with everyone else, will exceed that point
21 two parts per million total human impact or not. We will
22 chase them out of our community before they take the time to
23 do that.

24 There were a couple questions raised during the
25 question and answer period. One involved the Tier III

0022 1 outstanding resource water designation that would prohibit any
2 sort of new source or source of impact. And there was
3 confusion that I raised and I heard some response. I
4 certainly hope that the record will include a response to the
5 confusion as to whether an impact -- a significant social or
6 economic impact to a community would be allowed if there were
7 significant public support for such.

8 And I don't think the constitutional limits within
9 Washington on taking of private property can be amended by
10 popular vote or by roll call within a community, either the
11 greater State community or even individually within a local
12 community. I think recognition of those constitutional limits
13 directly in the WAC is necessary and, in fact, has been
14 proposed in the new shoreline guidelines by the same agency.

15 I would ask that you look at that language regarding
16 that that's been put within the proposed shoreline guidelines
17 and mimic those.

18 And I would also ask that under the antidegradation
19 policy there is a limit or proposed limit on no measurable
20 input or impact in areas with excellent water quality unless
21 you do adaptive management and all known reasonable

22 technology. I would ask that you re-examine that and look at
23 the whole concept of adaptive management, because it can be a
24 black hole in which a landowner business falls into and can't
25 escape from.

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1 It removes certainty if under constant
2 re-examination and constant re-evaluating of what your potential
3 impact might be and constant retesting of the environment, if
4 the result of that is expected change, that, as well, would
5 have a significant chilling effect.

6 Most businesses and communities rebuild a sewer
7 treatment plant, invest in water quality treatment
8 infrastructure with a multi-year payback on that. We take out
9 loans for ten and 20 plus years. If under adaptive management
10 we are constantly changing before we have paid off the old, we
11 are going to bankrupt some of our businesses and communities.

12 You know, I have had it explained to me as just kind
13 of a tight squeeze, that you get used to a hug over the years.
14 But, I think, to me it feels more like a noose around your
15 neck and it's slowly constraining, adaptive management. You
16 don't really notice until that second that it cuts off your
17 air and it's too late. So I certainly hope we can put some
18 constraints on adaptive management.

19 The last thing I want to say, what's the hurry? The
20 Feds, EPA, Congress are reviewing their current standards.
21 The scientific basis for those has been challenged and is
22 under review by the National Academy of Sciences. In the
23 State you haven't been able to accomplish as many as you
24 think, anyway, and as you've been mandated to do. The quality
25 of those is highly in question. We are already above the

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1 national standards.

2 And it's going to be hard for us to afford these new
3 standards now in the time of economic downturn. What's the
4 hurry? We need to take more time, answer some of these
5 questions, and start over.

6 Thank you.

7 MS. POSTON: Okay. Thank you. Okay.

8 Commissioner Pat Hamilton.

9 PAT HAMILTON: Thank you. Thank you for this time
10 this evening.

11 I am going to put in some complaint, however. We
12 went to your website and looked up the public rule making
13 hearings on this particular WAC. It said all hearings begin
14 at 6:00 p.m. And since Vancouver is like two and a half hours
15 from where we come from, we figured we might get home at a
16 decent hour, but we certainly won't.

17 We didn't get any of those papers that you
18 published. We went to your website. I want to give you a
19 copy of this for your record so that you know that I'm not
20 just blowing smoke.

21 Also, I think the thing that really disconcerts
22 me -- and Bryan touched on the issues that actually physically
23 happened to our community with the TMDL done that -- I
24 literally had to go and have legislation passed before it
25 really caught the eye of people, and we were able to work

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1 through the process on TMDL and get money for the community to
2 take it over so we knew we had credible science, rather than
3 possibly politically driven science that would have pretty
4 much strangled our community. We had to go on appeal on
5 several issues and fight that with AWB, and -- Association of
6 Washington Businesses -- and the BIAW, and the Grange, all
7 those folks.

8 So what happens on this document? It's been going
9 on for a long time. And I've got copies of the stakeholders
10 involved. But it didn't go to the public until the end of
11 December. We did not receive it in Pacific County. On
12 January 8th, 2002, I wrote for information on this WAC and I
13 specifically wanted the citations of scientific literature,
14 best available science supporting the establishment of water
15 quality standards. I wanted memos, e-mails, et cetera, et
16 cetera.

17 I will say they were fairly responsive. I did
18 finally get it. It looked to be about 20 CDs that I could go
19 through. I appreciate getting them.

20 But the difficulty is, I just got the CDs. Now we
21 go through, this is the last public hearing and we are going
22 to adopt this in July. We are going to sign it off to the
23 Feds.

24 It's just a big rush. You have had years to put
25 this together. We have had four months to review it. I think

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1 that's inappropriate.

2 I think there is a problem in this State where when
3 we get together people are never interested. We take a bunch
4 of white papers. We subtract from that what we are
5 interested, and we put it together into guidelines and things
6 that we now have to comply with. And we don't have the
7 correct amount of on-the-ground testing.

8 Now, in our community we had the helicopter fly over
9 and take water temperatures. But the water temperature they
10 reflected are only like a very minimum portion of the top of
11 the water and they are not reflecting the cooler areas that
12 are in the bottom.

13 If you go swimming in the river or creek you will
14 know you will be standing in water that will be warm. As you
15 get out further you will find some very cold pockets, which
16 fish will be drawn to.

17 A lot of your testing was done in fish tanks. The
18 temperature was designed to see where the stresses were. Fish
19 swim. They go from one area to another area. They seek cold.
20 They don't just sit in a pocket of hot water to be stressed.

21 There is one area in my county where we are supposed
22 to lower the temperature by one degree, one degree. How much
23 money, how much buffer, how many set-asides are we to make to
24 lower it by one degree when those dissolved oxygen and
25 temperature levels are normal and accustomed to our river?

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1 We are not glacially fed. We do not have any snow
2 cooling whatsoever. Somehow we have to go out and restrict
3 whatever happens to be going on in the area to accommodate one
4 degree. Where is the cost-benefit analysis? Salmon are
5 adaptive.

6 Let's go back to the Mount St. Helens disaster in
7 the eighties. The prediction was there would never be another
8 salmon in the Toutle River. We had extreme sedimentation that
9 went into the water, we had very hot material entering the
10 water, and we had complete loss of tree cover. And guess
11 what? It all regenerated itself.

12 Now, I think that's an extreme case. I don't think
13 we'd ever want to go out and engineer something like that.
14 But it gives us a little bit of an idea just how adaptive
15 these creatures are.

16 We need to get out of the collaborative approach and
17 back to the on-the-ground approach. We need to adhere to
18 Federal standards.

19 We cannot bear any more in our communities. We have
20 the Fish and Forest. We have 80 percent of my 987 square
21 miles of Pacific County still in timber. Eighty percent of
22 that is privately owned. I have constituents that, through
23 the buffers on Fish and Forest, have literally lost 200 acres
24 and more to regulations. These are all surrounding several
25 streams that crisscross each other.

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1 We have classifications of streams that are being
2 changed, buffers that are being changed. All of these impact
3 water quality. All of these impact any kind of ownership, any
4 kind of ability to maintain a business. It seems like it
5 doesn't stop.

6 Yes, we need clean water. But what standard are we
7 using? Fish cannot live in a bottle of Culligan water. They
8 die. They don't have anything to eat. It's too sterile for
9 them. Drinking water standards are different than what rivers
10 need to be.

11 And a group of collaborative people getting
12 together, making warm and fuzzy decisions I do not think are
13 appropriately armored with the correct scientific data to make
14 those decisions.

15 While I appreciate our neighbors from Oregon coming
16 in and telling us how many more testings we should make, I
17 might add they are in worse financial shape than we are. We
18 have a state with billions of dollars in deficit. We have the
19 highest unemployment rate, rotating from number one, two, and
20 three, in the nation. Yet we continue to increase on a daily
21 basis the requirements for anybody that is trying to make a
22 living in the State to the point where, I guess, the goal is
23 if we all move out then we can go back to prehistoric
24 standards and maybe then they would be happy.

25 It's too much. There are too many layers. We are

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1 not being scientific. We are doing things that even the Feds
2 are questioning. We have personally witnessed the TMDL
3 debacle that has crushed our community. Yet we are going to
4 go out and raise the bar once again?

5 There is no common sense. There is too much money
6 being spent and there is no salmon being saved.

7 Thank you.

8 MS. POSTON: Thank you.

9 Okay. Mr. Jim McCaulay.

10 JIM McCAULAY: For the record, my name is Jim

11 McCaulay. I am the manager of environmental affairs for The
12 Campbell Group. We manage forest land in Oregon, Washington,
13 and California. And in Washington State our management base
14 is a little over half a million acres.

15 We are interested in these rules because of their
16 impact on our overall business operations. And we have had a
17 chance to be involved in some of the process and involvement
18 in terms of how this process has simply gone along here for
19 the last couple years. I personally have actually been
20 involved with the triennial review process historically in
21 Oregon, as well as the regional water quality standard the
22 Federal EPA has been working on.

23 We can offer some general support for the current
24 package as it's been presented. Appreciate the level of data
25 used in the current rule package of DOE. We will be

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1 submitting more specific comments within the written comment
2 period by March 7th, but I thought it was at least important
3 to bring up a few items.

4 Some of the things that have taken place during
5 development of these rules will be important to formally
6 recognize in the final package. The first of those elements
7 comes down to forest land as a land use has dramatically
8 increased its standards that will have an overall impact to
9 improve water quality and improve habitat of salmon and other
10 fish populations throughout the State.

11 There is a little over eight million acres of forest
12 land across Washington State that are privately held that are
13 affected by the Forest and Fish rules and a little over 60,000
14 miles of privately forested stream miles that have been
15 impacted by the Forest and Fish rules that are substantially
16 increased. These are elements that are important to include
17 in the final draft, as well.

18 The other items that are important, again, to try to
19 take credit for in understanding overall increase in water
20 quality protection on forest land, including the Northwest
21 Forest Plan that's in place on Federal lands throughout
22 Washington State, Habitat conservation Plans that have been
23 completed, physical TMDLs that are being implemented across
24 forest land areas, as well as a host of landowners who have
25 gone through a certification process, adding measurable

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1 standard to how they are managing the lands.

2 One thing that will be very important to recognize
3 within this final rule package is just simply the Forestry and
4 Fish rule package. By 2005 these rules will have gone through
5 a Federal assurances process for coverage under both the Clean
6 Water Act, as well as the Endangered Species Act. Those are
7 important elements, as well. So that by the end of this
8 process the entire forest land base in Washington State, both
9 Federal and private, will have received protection and will
10 receive essentially certification for protection of standards
11 under the Clean Water Act and the Endangered Species Act, and
12 represent our role or our responsibility in protecting water
13 quality.

14 We are asking that there is no duplication in those
15 processes because of the amount of work that has been already

16 gone through. And given the budget process we can do that.
17 Your work is already done on the forest setting in Washington
18 State.

19 Thank you.

20 MS. POSTON: Okay. Thank you.

21 At this time I have no other folks who have
22 indicated on the form that they would like to present
23 testimony. So is there anybody out there?

24 Yes, sir. Would you please come forward and state
25 your name and your address notice record.

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1 DAN FINK: Yes, ma'am. My name is Dan Fink. I am a
2 forester with Longview Fiber Company. My mailing address is
3 PO Box 667, Longview, Washington, 98632.

4 Longview Fiber Company owns roughly 250,000 acres in
5 Washington State scattered in numerous counties. I appreciate
6 the opportunity this evening to voice support for the
7 revisions to their State water quality standards.

8 It's impressive to see that your agency's proposed
9 water quality standards are generally consistent with other
10 Federal, state, tribal, local, and private sector activities
11 aimed at protecting fish habitat.

12 As has recently been mentioned, there are a number
13 of measures to protect water that have been put into place
14 recently. As private timber landowners, we are adjusting to
15 new forest practice regulations called Forest and Fish, which
16 include greatly increased leave-tree buffers along streams.

17 Other areas of legislation that protect water
18 quality in the State, the Northwest Forest Plan covers Federal
19 forests, Habitat Conservation Plans cover state owned forests,
20 and also numerous private forests. And, of course, there are
21 many other regulations that protect water quality.

22 It's good to see that the water quality standards
23 proposed by DOE complement rather than contradict recent
24 efforts to restore native salmon runs and protect water
25 quality. They are based on a gleaning of all the available

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1 scientific research information and field studies that are
2 available.

3 That's my comment and thank you.

4 MS. POSTON: Okay. Thank you so much.

5 Is there anyone else who would like to present
6 testimony this evening?

7 No. Okay. All the testimony presented at this
8 hearing and the other seven hearings, as well as any written
9 comments received, are part of the official record for this
10 proposal and will receive equal weight in the decision-making
11 process.

12 The public comment period ends March 7th, 2003 at
13 5:00 o'clock p.m. Please submit written comments to Susan
14 Braley -- that's B-R-A-L-E-Y -- at the Department of Ecology,
15 Post Office Box 47600, Olympia, Washington, 98504-7600.
16 Written comments mailed must be postmarked by March 7th, 2003.
17 You may submit comments by e-mail to Susan. Her e-mail
18 address is swqs@ecy.gov. Comments may also be received via
19 the Fax. Our Fax number is (360)407-6426.

20 All oral and written comments received during the

21 public comment period will be responded to in a document
22 called a Response to Comments Summary that will state
23 Ecology's official positions on the issues and concerns raised
24 during this public comment period. That document should be
25 available around July 23rd, 2003. It will automatically be

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1 mailed out to everyone who provided oral or written testimony
2 and also provided us with return address information. It's my
3 understanding it will also be posted on Ecology's web page,
4 the water quality web page.

5 As stated earlier, the Department of Ecology is
6 anticipating the adoption of this regulation to occur no later
7 than July 1st of 2003.

8 On behalf of the Department of Ecology, thank you so
9 much for spending your evening with us with our workshop and
10 public hearing. This hearing is adjourned at 9:03 p.m.

11 Thank you.
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1 CERTIFICATE

2

3 STATE OF WASHINGTON)
) ss.

4 COUNTY OF CLARK)
5

6 I, Sarah C. Thomas, a Notary Public for Washington,
7 certify that the hearing here occurred at the time and place
8 set forth in the caption hereof; that at said time and place I
9 reported in Stenotype all testimony adduced and other oral
10 proceedings had in the foregoing matter; that thereafter my
11 notes were reduced to typewriting under my direction; and the
12 foregoing transcript, pages 4 to 34 both inclusive, contains a
13 full, true and correct record of all such testimony adduced
14 and oral proceedings had and of the whole thereof.

15 I further advise you that as a matter of firm
16 policy, the Stenographic notes of this transcript will be
17 destroyed two years from the date appearing on this
18 Certificate unless notice is received otherwise from any party
19 or counsel hereto on or before said date;

20 Witness my hand and notarial seal at Vancouver,
21 Washington, this 20th day of February, 2003.
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Sarah C. Thomas, RPR, CSR

19

CSR No. TH-OM-AS-C47307

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My notary commission expires: 9-22-05

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Wenatchee Public Hearing
Water Quality Standards
January 27, 2003

BEV POSTON: Let the record show that it is 8:05 p.m. on January 27, 2003 and this public hearing is being held in the Chelan County Auditorium located at 400 Douglas, Wenatchee, Washington.

The primary purpose of this hearing is to receive public comments regarding proposed changes to Chapter 173-201A, Water Quality Standards for Surface Waters of the State of Washington. The legal notice of this hearing was published in the Washington State Register on January 3, 2003; Issue No. 03-01-124. In addition, display ads announcing the hearings were published in the following papers: On January 15, 2003, The Olympian; on January 23, 2003, The Wenatchee World, Spokesmen Review, Tri-City Herald, and Yakima Herald. On January 30, 2003, the notices will be published in the Bellingham Herald, Seattle Times Post-Intelligencer, Peninsula Daily News, Aberdeen World, the Columbian located in Vancouver, and the Longview Daily News. Ecology also directly mailed out approximately 3,320 announcements; 550 email announcements; and 621 CDs to potential interested citizens, regulated businesses, governmental officials, and every city, county, and tribe in the state.

Ecology is expecting to adopt the proposed changes as well as the draft Environmental Impact Statement no later than July 1, 2003. Federal regulations require that state Water Quality Standards be reviewed and approved by the United States Environmental Protection Agency for compliance with the Clean Water Act prior to their use. The Environmental Protection Agency has 60 days to approve or 90 days to disapprove the state adopted standards. If the state Water Quality Standards are disapproved by the Environmental Protection Agency because of non-compliance with either the Clean Water Act or the Endangered Species Act, the Environmental Protection Agency must promulgate new standards on behalf of the state or seek alternative measures. The new Water Quality Standards will not take effect for approval of activities covered under the federal Clean Water Act until this process is complete. At this point in time, we have one person who has indicated they would like to provide testimony. And if you will please come down and state your name, who you are affiliated with, and your address for the record, and provide your testimony, I would really appreciate it.

BUELL HAWKINS: My name is Buell Hawkins, County Commissioner for District 3. My concern as I indicated earlier is that I think I expressed for everybody in this room an increased I guess apprehension with the potential impact for these new regulations on our county. And specifically the ability of our citizens to not only use their existing lands in manners that they have used historically over a period of time. But also to develop that land into new uses as may be available in the future. Right now in Chelan County, only 13 percent of the land in our entire county are held in private lands, held in private hands. And our ability to use and develop that land is very much restricted by the regulations that are proposed upon us from the state and from the federal level. One of the things that really concerns me is the wording under the Slide 16, under, you know, Tier 2. It says waters of higher quality than the assigned criteria can only be degraded if necessary in the overriding public interest. And that's underlined. And when I asked what that means we're to regulate that, you said well we've regulated through the permitting process such as permits for things like sewage treatment facilities, sewage discharge. That would be in itself a restriction on our ability to use some of our existing lands. If we weren't able to get, for example, a sewage discharge permit, that would limit ability to develop land in a density level that would meet the economic criteria for development. So that's my concern. Thank you.

BEV POSTON: Thank you. Is there anyone else who had an opportunity to kind of think about things? Anyone else who would like to present oral testimony

tonight? No. That's okay. All testimony that was presented at this hearing and the other seven hearings that we're going to be holding over the course of the next two weeks, as well as any written comments that are received, are part of the official record for this proposal and will receive equal weight in the decision-making process. The public comment period ends on March 7, 2003 at 5:00 p.m. Any thing sent by mail needs to be postmarked by March 7th, 5:00 p.m. Please submit written comments to Susan Braley, Department of Ecology. The address is P.O. Box 47600, Olympia, Washington 98504-7600. Written comments, again, must be postmarked by March 7, 2003. No, they don't have to be received by, I'm sorry, by 5:00 p.m. They must be postmarked by March 7th. I apologize. You may submit comments by email to Susan. Her email address is swqs@ecy.wa.gov and that is not case-sensitive. Comments may also be received via fax to Susan. The fax number for the Water Quality Program is area code (360) 407-6426. And I would appreciate it if you're really careful with that because my number is 6425 and I get a lot of fax calls. Comments that are sent by email or fax have to be received by 5:00 p.m. on March 7th. That's what I meant to say earlier and I apologize for my misdirection now. All oral and written comments received during the public comment period will be responded to in a document that's called "A Response to Comment Summary" that will state Ecology's official position on the issues and concerns that have been raised during the public comment period. This document, we're hoping, should be available around March 23, 2003. It will automatically be mailed out to everyone who provided oral or written testimony, provided with return address information. If there's anyone else who would like a copy and is not presenting testimony, if you'd come forward afterwards I'll mark the sign-in sheet here to let staff know that you're interested in receiving that document also. Even though you're not providing testimony, you might want to know what Ecology's official comments and responses to folks who have provided testimony. As stated earlier, Ecology is anticipating the adoption of this regulation to occur no later than July 1, 2003. On behalf of the Department of Ecology, I want to thank you for coming to our workshop and the public hearing. We appreciate your time and comments that we've received. Yes Sir.

MICHAEL BUFFALO MAZETTI: I do have a comment.

BEV POSTON: Okay, then if you can come here and state your name.

MICHAEL BUFFALO MAZETTI: I would like to know also if

BEV POSTON: I need to have you ___ into the recorder to make sure that we get everything. Okay?

MICHAEL BUFFALO MAZETTI: My question is I'd like to make comment now; but I'd like to also mail one in.

BEV POSTON: That's fine. That's not a problem. I need for you to state your name, your address, who you're with, and go ahead.

MICHAEL BUFFALO MAZETTI: Okay. My name is Michael Buffalo Mazetti (?? Not sure of spelling of name.). I'm from Tonasket, Washington, P.O. Box 433, Tonasket 98855. I'm with myself. My testimony is as follows. I believe that Ecology needs to retain protection for recreational uses and salmon migration with any changes that they make. Retain the classification system that provides the general protection for all Washington waters. I feel that they should strengthen, not destroy, the links between water quality and water quantity. We need more waters in our rivers, not less. And I believe we should minimize loopholes and allow exemptions only for public health emergencies. Thank you for hearing these comments.

BEV POSTON: Okay. Thank you.

Okay. One last time, anyone else? Okay. On behalf of Ecology, thank you for attending and we appreciate the opportunity to come here. And this hearing is adjourned at 8:15 p.m. Thank you.

end of tape

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1 WASHINGTON STATE DEPARTMENT OF ECOLOGY
2 WATER QUALITY PROGRAM
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9 ECOLOGY PUBLIC HEARING
10 PROPOSED CHANGES TO THE WATER QUALITY STANDARDS
11 AT DEPARTMENT OF ECOLOGY
12 YAKIMA, WASHINGTON
13 JANUARY 30, 2003
14 8:13 p.m.
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1 A P P E A R A N C E S
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3 HEARING OFFICER: BEV POSTON
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5 SPEAKERS: (In order of appearance)
6
7 DONALD STRUCK
8 CAROL READY
9 JIM VANDERPLOOEG
10 JEFF BERRY
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1 P R O C E E D I N G S
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3 MS. POSTON: Let the record show it is 8:13
4 p.m. on January 30th, 2003, and this hearing is being

5 held at the Ecology Central Regional Office located at 15
6 West Yakima Avenue Suite 200, Yakima, Washington. The
7 primary purpose of this hearing is to receive public
8 comments regarding proposed changes to Chapter 173-201A
9 Water Quality Standards for Surface Waters of the State
10 of Washington.

11 The legal notice of this hearing was
12 published in the Washington State Register on January
13 3rd, 2003, Issue No. 03-01-124. In addition, display ads
14 announcing the hearings were published in the following
15 papers:

16 January 15th, 2003, the Olympian; January
17 23rd, 2003; the Wenatchee World, Spokesman Review,
18 Tri-City Herald, Yakima Herald; and on January 30th,
19 2003, the Bellingham Herald, Seattle Times/Post
20 Intelligencer, Peninsula Daily News, Aberdeen World, The
21 Columbian of Vancouver, and the Longview Daily News.

22 The Department of Ecology also directly
23 mailed out approximately 3,320 announcements, 550 e-mail
24 announcements, and 621 CD's to potential interested
25 citizens, regulated businesses, government officials, and

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1 every city, county, and tribe in the State of Washington.

2 The Department of Ecology is expecting to
3 adopt the proposed changes as well as the draft
4 Environmental Impact Statement no later than July 1st of
5 2003. Federal regulations require that state water
6 quality standards be reviewed and approved by the United
7 States Environmental Protection Agency for compliance
8 with the Clean Water Act prior to their use.

9 The Environmental Protection Agency has 60
10 days to approve or 90 days to disapprove the state
11 adopted standards. If the state water quality standards
12 are disapproved by the Environmental Protection Agency
13 because of noncompliance with either the Clean Water Act
14 or the Endangered Species Act, the environmental
15 Protection Agency must promulgate new standards on behalf
16 of the state or seek alternative measures. The new water
17 quality standards will not take effect for approval of
18 the activities covered under the Federal Clean Water Act
19 until this process is complete.

20 Okay. At this time, we are ready to begin
21 public testimony. And Mr. Don Struck, is he here?

22 MR. STRUCK: Yes, ma'am.

23 MS. POSTON: Okay. Please be seated and speak
24 into the microphone.

25 MR. STRUCK: My name is Donald Struck. I'm

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1 here representing the Board of County Commissioners for
2 Klickitat County. I have prepared testimony I would like
3 to read, and then I'd also like to provide you with some
4 documentation for the record, please.

5 MS. POSTON: Okay

6 AUDIENCE MEMBER: It's hard to hear him.

7 MS. POSTON: Andrew? Is Andrew in here? The
8 microphone apparently is not carrying far enough and I --
9 You might not have it up quite loud enough. Here.

10 (Pause in the proceedings.)

11 MR. STRUCK: Klickitat County welcomes the
12 opportunity to offer testimony this evening. I would
13 like to briefly address the county's concerns regarding
14 the rule-making process and also provide specific
15 comments on several of the proposed changes to the
16 state's water quality standards. In addition, I will be
17 submitting a number of documents into the record this
18 evening that directly support the county's remarks and
19 its positions on these issues.

20 The rule-making procedures in the
21 Administrative Procedures Act outline a specific process
22 whereby interested parties can effectively and equitably
23 participate in the rule-making process. Unfortunately
24 this case, Ecology has failed to meet that standards, and
25 has allowed -- in the case of Condit Dam -- a private

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1 corporation, Pacific Corps, to influence this rule-making
2 process to further, not only, Pacific Corps' agenda, but
3 Ecology's own agenda. I am referring to specific
4 proposed changes to the water, state water quality
5 standards that were developed and negotiated behind
6 closed doors between Ecology, Pacific Corps, and other
7 dam removal supporters. Several of the documents that we
8 will submit into the record this evening clearly
9 illustrate this fact.

10 The threshold question that the county has
11 been asking for some time on Condit Dam is whether
12 Ecology's signing of the settlement agreement and it's
13 dual responsibility as a permitting agency can be carried
14 out in a fair and unbiased manner. Based on the county's
15 review of public records in Ecology's offices, it is
16 clear that Ecology has prejudged the outcome of the
17 Condit Dam project, prejudged the outcome of the SEPA
18 process, and prejudged the outcome of the related 401 and
19 MPDES permit processes. The department's earlier
20 representations to the commissioners that Ecology's work
21 will be done in a, quote, open and transparent way, rings
22 hollow.

23 In June of 1999 Pacific Corps sent a letter
24 to Ecology stating, quote, significant rule-making
25 actions by Ecology will be necessary to facilitate

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1 permitting for a project removal, end quote. Just seven
2 days later, Ecology's representative responded, quote, I
3 have advised the Ecology Water Quality Program to modify
4 or adopt new regulations to accommodate this project.
5 Further quote, that Ecology staff are aware that current
6 regulations may not permit the proposed removal.

7 What is even more disturbing to the county is
8 that the documents clearly show that Pacific Corps' own
9 attorney drafted proposed rule changes and met with
10 Ecology staff extensively to refine the proposed
11 language.

12 I ask again: Is this open and transparent
13 rule making or decision making?

14 The result is proposed changes to the state's

15 antidegradation policy that would allow acute
16 degradation, such as the unmitigated release of 2.4
17 million cubic yards of sediment and debris from behind
18 Condit Dam without adequate environmental safeguards.
19 The proposed language in WAC 173 is vague and
20 inconsistent with federal antidegradation standards.
21 An attempt to classify the Condit Dam
22 Blow-and-Go Method of dam removal as a, quote, major
23 watershed restoration activity having short-term impacts,
24 is, at best, a stretch.
25 The record shows that Pacific Corps itself

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1 has expressed concern that the phrase "major watershed
2 restoration activity" may not describe their Condit
3 proposal. Pacific Corps knows its decision to remove
4 Condit Dam is a business decision first and foremost and
5 not a Pacific Corps sponsored watershed restoration
6 activity. Thank you.

7 MS. POSTON: Okay. Mr. Don Schramm?
8 (Pause in the proceedings.)

9 MS. POSTON: Okay. Mr. Don Schramm is not
10 here?

11 AUDIENCE MEMBER: Not here. He's going to be
12 written.

13 MS. POSTON: Oh, okay. The next person is
14 Carol Ready.

15 (Pause in the proceedings.)

16 MS. POSTON: State your name for the record.

17 MS. READY: My name is Carol Ready. I'm here
18 on behalf of the Kittitas County Water --

19 MS. POSTON: Can folks hear her?

20 MS. READY: My name is Carol Ready. I'm here
21 on behalf of the Kittitas County Water Purveyors. They
22 provide water to about 90,000 acres of irrigated land in
23 Kittitas County.

24 First off, I want to talk about temperature
25 bacteria and process and some general comments. First of

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1 all, I want to applaud Ecology for trying to average
2 temperature rather than look at single point
3 temperatures, although compliance will be difficult now
4 that we have to do temperature logging, data logging.

5 In the larger question of temperature, I think
6 we're asking the wrong question as to what fish need and
7 setting standards based on what fish presumably need. I
8 think the question is: What does Mother Nature offer at
9 any given point in the watershed or portion of a
10 watershed?

11 We have watershed councils all over. We've
12 been looking at salmon habitat. We have watershed
13 councils that have analyzed about every stretch of creek
14 we have. Why aren't we setting temperature standards
15 based on watershed reaches, since we know a lot about the
16 watershed?

17 A statewide standard in Washington doesn't
18 work. We have a west side and an east side. They're
19 totally different environments. It's like asking your

20 kids how tall they will be when they will be as tall as
21 Mother Nature says they will be.

22 Okay. Bacteria. We need to consider Mother
23 Nature. In Kittitas we have wildlife that probably
24 outnumber the local population: Rodents, deer, avian,
25 water fowl. We're finding lots of bacteria in our waters

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1 that are, very likely, not from human sources. I would
2 consider removing the agricultural criteria. I've heard
3 from my constituents that there doesn't seem to be a need
4 for that, and that would remove a lot of other monitoring
5 activities that, then, wouldn't then be necessary.

6 Who assigns uses to stream reaches and what is
7 the process to change those designations? And that must
8 include a lot of local involvement. And my concern about
9 having to approach Ecology to start a rule-making process
10 to change something that we feel was inaccurately
11 assigned a beneficial use -- for example, spawning and
12 rearing rather than just rearing habitat -- is going to
13 put a burdon on local communities to come to Ecology and
14 follow the whole rule-making process and get our own
15 scientists together and to look and evaluate those
16 things.

17 A statewide rule change, I mean, is that going
18 to happen every five years and we'll throw all the little
19 water stretches in together? And how is that going to
20 happen? And we have to follow the old standard and
21 comply with the old standard until that rule change can
22 be made.

23 I think sometimes the uses will conflict.
24 That was mentioned earlier today. If you want a
25 productive stream that has lots of nutrients and organic

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1 matter and repairing habitat, it's going to have some
2 fecal. Primary contact may not be advisable. Fish and
3 humans may be different water quality characteristics.

4 Also, is there any consideration for
5 ephemeral streams? We have streams that will flow at
6 flood stage in the spring and have little to no flow in
7 August and September. When we have to meet criteria for
8 temperature at all times, it won't be met when these
9 streams are going dry, and I don't want to be considered
10 in violation of standards just because a natural event is
11 occurring. I think I've covered it all. Thank you.

12 MS. POSTON: Okay. Thank you. Okay. Jim
13 VanderPloeg?

14 MR. VANDERPLOEG: Good evening. I'm Jim
15 VanderPloeg. I'm a resident of Yakima, Washington. I,
16 also, represent the forest products industry. I, too,
17 would like to congratulate the Department of Ecology on a
18 well organized and efficient public hearing, and I think
19 it's an important thing to do.

20 Tonight I'd like to focus some oral and
21 written comments on three main areas: The water
22 temperature criteria, the use-based format approach that
23 was discussed, and the antidegradation and implementation
24 plan.

4 I'm also concerned about seasonal differences and
5 east/west concerns, concerns between East and Western
6 Washington. And I think I'll limit that to my comments,
7 but I would support Jim VanderPloog's comments as well.

8 MS. POSTON: Larry Bellamy?

9 (Pause in the proceedings.)

10 MS. POSTON: No? Okay. That's the list of all
11 the folks who've indicated at this point that they would
12 like to testify. Is there anyone here tonight who didn't
13 mark the box with a "Y" and have some comments that they
14 would like to put into the record?

15 (Pause in the proceedings.)

16 MS. POSTON: No? Okay. All the testimony
17 that was presented at this hearing and the other seven
18 hearings as well as any of the written comments that have
19 been recieved are part of the official record for this
20 proposal and will receive equal weight in the
21 decision-making process.

22 The public comment period ends on March 7th,
23 2003 at five o'clock p.m. Please submit written comments
24 to Susan Braley, Department of Ecology, Post Office Box
25 47600, Olympia, Washington 98504-7600. Written comments

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1 mailed must be postmarked by March 7th, 2003. You may
2 submit comments by e-mail to Susan at -- and this is not
3 case sensitive -- swqs@ecy.wa.gov dot. Comments may also
4 be received via fax to area code 360-407-6426

5 All oral and written comments received during
6 the public comment period will be responded to in a
7 document called a Response to Comment Summary that will
8 state Ecology's official position on the issues and the
9 concerns that have been raised during the public comment
10 period. This document should be available around June
11 23rd, 2003. It will automatically be mailed out to
12 everyone who has provided oral and written testimony and
13 who also provided us with return address information.

14 As stated earlier, Ecology is anticipating the
15 adoption of this regulation to occur no later than July
16 1st of 2003.

17 On behalf of the Department of Ecology, thank
18 you very much for coming this evening to the workshop and
19 the public hearing. This hearing is adjourned at 8:33.
20 Thank you.

21 (8:33 p.m.)
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1 STATE OF WASHINGTON)
2) ss.
3 COUNTY OF YAKIMA)
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I, BETH L. DRUMMOND, do hereby certify that at

7 the time and place heretofore mentioned in the caption of
8 the foregoing matter, I was a Certified Court Reporter
9 and Notary Public for the State of Washington; that at
10 the said time and place I reported in stenotype all
11 testimony offered and proceedings had in the foregoing
12 matter; that thereafter my notes were reduced to
13 typewriting; and that the foregoing transcript,
14 consisting of 15 typewritten pages, constitutes a true
15 and correct record of all such testimony offered and
16 proceedings had and of the whole thereof.

17 WITNESS my hand and seal at Kennewick,
18 Washington, on this 12th day of January, 2002.
19
20

21

Beth L. Drummond
22 CCR No. DRUMMBL273LA
23 Certified Court Reporter
24 Notary Public for Washington
25 My commission expires: 7-9-2005